EMPLOYMENT TRIBUNALS

PUBLIC PRELIMINARY HEARING

Claimant: **Mr S Scherdel**

Respondent: **Amplius Living**

Heard at: **Leeds Employment Tribunal (by remote video)**

On: **Monday 29 June 2026**

Before: **Employment Judge S Shore**

Representation

For the Claimant: **In Person**

For the Respondent: **Mr N Cooksey, Counsel**

JUDGMENT AND WRITTEN REASONS

The judgment of the Employment Tribunal is that: -

(1) The claimant's application to amend his claim to add three protected disclosures is granted.

(2) The claimant's claim of unfair dismissal under section 103A of the Employment Rights Act 1996 ("ERA 1996"), is struck out as having no reasonable prospect of success.

(3) The claimant's claims of detriment on the grounds that he made a protected disclosure under section 47B of the ERA are struck out as having no reasonable prospects of success.

(4) The claimant's claim of failure to make reasonable adjustments in respect of an alleged failure of the respondent to refer employees to occupational health when a GP recommends a referral is struck out as having no reasonable prospect of success.

REASONS

Background

1. The claimant was employed by the respondent, a charitable housing association and Registered Society (Company Number RS007853), as a Senior Disrepair Manager from 24 March 2025 to 1 August 2025 on a six-month fixed term contract. He was dismissed for the stated reason of failing his probationary period. Early conciliation started on 17 July 2025. An early conciliation certificate number R202297/25/96 dated 29 July 2025 was sent to the parties.

2. The claimant presented his ET1 on 6 August 2025. At paragraph 8 of his ET1, the claimant indicated the following claims:

   2.1 Unfair dismissal;

   2.2 Disability discrimination;

   2.3 Whistleblowing;

   2.4 'Other payments'

3. In the narrative box where claimants are asked to state the nature of any other type of claim that the Tribunal can deal with, the claimant wrote, "*Whistleblowing, disability discrimination, GDPR breach, OH denial, SAR mishandling, retaliation*"

4. At paragraph 9.2 of his ET1, the claimant indicated that he wished to claim interim relief under section 128 of the Employment Rights Act 1996, as he alleged that his

dismissal was, "*Wholly or mainly due to protected disclosures under the Public Interest Disclosure Act 1998…*"

5. The claimant stated at paragraph 12 of his ET1 that he was, *"…currently experiencing a serious mental health condition, including suicidal ideation and psychiatric distress. I am being treated with prescribed medication (Sertraline), supported by a GP fit note dated 16 July 2025, which recommends specific adjustments.*" Unfortunately, the reasonable adjustments requested were not recorded in the version of the ET1 submitted.

6. On the same day that the claimant submitted his ET1, he emailed the Tribunal asking for his application for interim relief to be considered urgently.

7. The Tribunal considered the claimant's ET1 on 7 August 2025 and sent a series of letters via the Tribunal portal on 11 August 2025:

    8.1. A letter to the claimant confirming that his application for interim relief had been received and registered.

    8.2. A letter to the respondent with a copy of the claimant's application for interim relief.

    8.3. An urgent Notice of Interim Relief Hearing to both parties listing the hearing for29 August 2025 at Hull Combined Court Centre.

    8.4. A letter to the claimant acknowledging receipt of his claims.

    8.5. A Notice of Claim to the respondent, advising that its response to the substantive claims (everything except interim relief) must be received by the Tribunal by 8 September 2025.

    8.6. A Notice of Preliminary Hearing for 90 minutes by video on 16 December 2025.

8. On 11 August 2025 at 13:05pm the claimant sent an identical email to the one he had sent on 6 August requesting urgent consideration of his application for interim relief.

9. On 20 August 2025, the claimant submitted a request for reasonable adjustments for the interim relief hearing as follows:

> "*Dear Sir/Madam,*
>
> *I write further to my ET1 and the upcoming interim relief hearing scheduled for 10am on Friday 29 August 2025 at Hull Employment Tribunal.*
>
> *Unfortunately, due to a formatting issue, my ET1 did not include my request for reasonable adjustments, despite the fact that I am currently under ongoing medical care for mental health issues and have a written note from my GP at Greengates Surgery dated 16 July 2025, which specifies that no in-person, video or telephone meetings should take place and email-only communication should be used wherever possible.*

In light of the above, and pursuant to Section 20 of the Equality Act 2010, I respectfully request that the interim relief hearing is conducted by correspondence only, with all communications and submissions made via email to the Tribunal.

Please confirm that this reasonable adjustment will be applied and advise of any further information required."

10. On 21 August 2025, the respondent submitted its response to the claimant's application for reasonable adjustments, which consisted of 10 paragraphs.

11. On 22 August 2025, the claimant submitted a PDF document titled "*Correspondence_Hearing_Request-Samuel_Scherdel.pdf*" that set out the claimant's submissions in respect of the paper interim relief hearing that he sought.

12. The claimant provided his documents for the interim hearing through the portal on 27 August 2025.

13. Employment Judge Maidment responded to the claimant's application for adjustments on 28 August. He ordered that the interim hearing take place on the date listed and converted the interim hearing to video and invited the claimant to attend. HEJ Maidment pointed out the necessity to hear interim relief applications quickly and noted:

> "*The claimant may attend the hearing if he is able. He may keep his camera switched off if that would aid participation, If not his written submissions will be considered and the respondent's oral submissions before a decision is made. it is essential that the tribunal is provided electronically with a bundle of relevant documents and the claimant's written submissions in advance of the hearing.*"

14. EJ Maidment heard the interim relief application on 29 August 2025 and dismissed it. He also conducted a preliminary hearing and made orders that:

    14.1 By 3 October 2025, the claimant was to provide further information about his alleged protected disclosures in paragraph 8.2 of his ET1, and particulars of any additional protected disclosures that he wished to rely on by way on an amendment to his claim.

    14.2 By 31 October, the respondent was to confirm whether it opposed any application to amend and, if it did, what the reasons for opposition were.

    14.3 A preliminary hearing was to listed take place on 16 December 2025.

15. On 2 October 2025, the claimant submitted seven emails, most of which had attachments. These included his further information about protected disclosures.

16. On 31 October, the respondent submitted its response to the claimant's application to amend, which was to agree the suggested amendments, subject to receiving further information about the matters alleged.

17. On 8 December 2025, the respondent submitted a bundle of documents for the preliminary hearing on 16 December and its case management agenda for the hearing.

18. A preliminary hearing was held on 16 December 2025 before Employment Judge Ayre by video. The claimant represented himself. The respondent was represented by Nick Cooksey of Counsel, who also represented the respondent today. EJ Ayre noted at paragraph 4 of the case management order that the respondent had indicated on 27 October that it did not object to the amendments the claimant proposed to add complaints of post-employment detriment and victimisation, provided that the claimant provided particulars of the new complaints. The respondent objected to all other applications to amend.

19. EJ Ayre noted that the claimant was bringing claims of:

    19.1 Automatic unfair dismissal for whistleblowing.

    19.2 Whistleblowing detriment.

    19.3 Discrimination arising from disability.

    19.4 Failure to make reasonable adjustments.

20. EJ Ayre also noted that the claimant asserted that he met the definition of disability under section 6 of the Equality Act 2010 due to severe depression. She listed two public preliminary hearings.

21. The first of the two hearings is this hearing, the purpose of which is to:

    21.1 Decide whether the claimant should be given permission to amend his claim;

    21.2 Finalise a list of the issues that will need to be decided in the claim;

    21.3 Consider whether any part of the claim should be struck out on the ground that it has no reasonable prospect of success;

    21.4 Consider in the alternative whether the claimant should be ordered to pay a deposit as a condition of being allowed to pursue any part of the claim on the ground that it has little reasonable prospect of success;

    21.5 Discuss what further hearings are required and the dates for those hearings; and

    21.6 Make such Case Management Orders as the Employment Judge considers appropriate.

22. EJ Ayre listed a second public preliminary hearing for 7 September 2025 to determine:

    22.1 Whether the claimant met the definition of disability;

    22.2 Decide whether the claimant made protected disclosures; and

22.3 Make such Case Management Orders as the Employment Judge considers appropriate.

23. Adjustments were made for the claimant:

23.1 All hearings are to take place by video.

23.2 The claimant will need regular breaks during the course of the hearing.

23.3 The claimant may have someone with him for support.

24. The claimant was reminded of the two main cases on amendments to Tribunal claims: **Selkent Bus Co Ltd v Moore** [1996] ICR 836, and **Vaughan v Modality Partnership** [2021] ICR 535.

25. EJ Ayre set out a List of Issues and instructed the parties to write to each other and the Tribunal if they felt that the List was wrong or incomplete. The final List was to be determined at this hearing.

26. The claimant was ordered to write to the Tribunal and respondent by 6 January 2025 with the following information:

> "*6.1 Whether he wants to pursue a claim of post-employment whistleblowing detriment or not;*
>
> *6.2 Whether he wants to pursue a claim of victimisation or not;*
>
> *6.3 If he does want to pursue a claim of post-employment whistleblowing detriment, he must set out brief details of each and every alleged detriment, to include:*
>
> *6.3.1 What happened;*
>
> *6.3.2 When it happened;*
>
> *6.3.3 Who did it; and*
>
> *6.3.4 Why he says they did it because he made protected disclosures.*
>
> *6.4 If he does want to pursue a claim of victimisation:*
>
> *6.4.1 What are the 'protected acts' (within the meaning of section 27(2) of the Equality Act 2010) that he did? In relation to each protected act, he must set out:*
>
> *6.4.1.1 What he did; and*
>
> *6.4.1.2 When he did it.*
>
> *6.4.2 What detriments does he say the respondent subjected him to because he did a protected act (i.e. what are the acts of victimisation). In relation to each alleged detriment, he must set out:*

6.4.2.1 Who victimised him;

6.4.2.2 When they victimised him;

6.4.2.3 What they did; and

6.4.2.4 Why he says they did it because he did a protected act."

27. The respondent was ordered to respond to the claimant's further information by 27 January 2026.

28. The claimant was ordered to produce a Schedule of Loss by 19 January 2026.

29. The respondent was ordered to make any application for strike out by 30 March 2026.

30. If the respondent sought a deposit order, the claimant was ordered to come to this hearing prepared to give evidence about his financial situation and ability to pay a deposit if one is ordered.

31. The respondent was ordered to send the Tribunal a PDF of the hearing bundle by 22 June 2026.

32. The claimant was ordered to produce an impact statement by 10 February 2026 and send the respondent copies of his medical records by the same date.

33. The order was sent to the parties on 26 February 2026.

34. On 27 January 2027, the claimant wrote to the Tribunal and the respondent [124-125] and confirmed that:

    34.1. He wished to proceed with three protected disclosures only:

        34.1.1. <u>2 May 2025</u> to Rob Berry and Clive Pridgeon by email (CMO [138] para 3.1.1.1 refers. Contemporaneous documents at [193-194]);

        34.1.2. <u>13 June 2025</u> to "Amplius Living", said to be Cs grievance (CMO [138] para 3.1.1.3 refers. Contemporaneous documents / attachments at [195-244]); and

        34.1.3. <u>19 July 2025</u> to Eleanor Jacobson / Rachel Challoner (CMO [138] para 3.1.1.5 refers. Contemporaneous documents at [245-247])

35. On 9 March 2026, the respondent wrote to the Tribunal as follows:

"*We are writing to confirm the Respondent's position on disability for the above case.*

1. The Respondent admits that the Claimant had the pleaded condition of severe depression for the period March 2025 to August 2025 (the Relevant Period).

2. The Respondent admits that the aforesaid condition, absent any treatment, had a substantial adverse effect on the Claimant's day to day activities during the Relevant Period.

3. It is admitted that the Claimant's symptoms of severe depression include that:

a. he struggles to concentrate for sustained periods, retain information, prioritise tasks, and process complex or pressured situations;

b. he suffers from cognitive overload particularly where demands are time-critical or unexpected;

c. he experiences profound fatigue, low motivation, and difficulty initiating tasks. Routine activities such as responding to emails, organising paperwork, managing appointments, or maintaining basic household responsibilities require disproportionate effort;

d. he has a significantly reduced tolerance for stress and situations involving pressure, deadlines, or conflict cause a deterioration in his mental state;

e. he experiences emotional dysregulation and becomes overwhelmed easily; and

f. his sleep is severely disrupted.

4. On the specific basis set out above, the Respondent concedes, for the purpose of these proceedings only, that the Claimant

was, at all material times, a disabled person within the meaning of Section 6 of the Equality Act 2010 by reason of the impairment of severe depression.

5. This admission does not entail any admission relating to:

a. the impairment of ADHD - no admission is made in respect of this condition, which is not a pleaded impairment, notwithstanding the Claimant's reference to it in his disability impact statement;

b. the Respondent's knowledge;

c. substantial disadvantage in the workplace; and/or

d. things alleged to have arisen in consequence of disability for the purposes of the Claimant's discrimination arising from disability claim."

36. On 30 March 2026, the respondent made the following application:

"*In compliance with the Order of EJ Ayre, we submit on behalf of the Respondent:*

1. As previously set out in correspondence, the Claimant's application to amend should be refused in full at the PH. The Claimant stated in his email of 27 January 2026, that he is now only relying on 3 alleged protected disclosures. The Respondent submits that none of these alleged disclosures are included in his ET1 and all require an application to amend to be successfully made for the Claimant's automatic unfair dismissal claim and whistleblowing detrimental treatment claims to proceed any further.

2. The following submissions are made pending determination of the Claimant's application to amend at the PH. Should the Claimant's application be granted, the Respondent makes an application for strike out or in the alternative a deposit order under rules 38 and 40 of The Employment Tribunal Procedure (the ET Rules) on the following basis:

a. In respect of the Claimant's automatic unfair dismissal claim and each and every whistleblowing detrimental treatment claim, that those claims have no reasonable prospect of success (rule 38) or in the alternative that they have little reasonable prospect of success (rule 40) as, for each alleged disclosure:

i. there is not a disclosure of information;

ii. there is not a disclosure of information that in the reasonable belief of the Claimant, is made in the public interest; and/or

iii. there is not a disclosure of information that tends to show one or more of the following have occurred, are occurring or are likely to occur: breach of any legal obligation and/or danger to health and safety.

The Respondent submits that the Employment Tribunal must consider the above and for each of the 3 alleged protected disclosures in chronological order. If for example, disclosure 1 (2 May 2025) is found to have no reasonable prospect of qualifying as protected disclosure, the same conclusion must be reached for detrimental treatment allegations 4.1.1 to 4.1.4, which are said to have been done on the ground that the Claimant made that disclosure.

b. In respect of the Claimant's detrimental treatment claims listed as allegations 4.1.9 and 4.1.10 in the List of Issues, the Claimant will not be able to show that (1) a Respondent employee responding to the Claimant's data subject access request amounts to detrimental treatment and/or (2) that any such response constitutes detrimental treatment because the Claimant had made a protected disclosure. As such, these claims have no reasonable prospect of success (rule 38) or in the alternative they have little reasonable prospect of success (rule 40).

c. In respect of the Claimant's detrimental treatment claim set out in his email of 19 December 2025, that he was "subjected to repeated and persistent attempts by the Respondent to require my engagement in *post-termination procedural steps, including proposed Teams meetings and related live engagement, said to concern grievance and appeal processes" the Claimant will not be able to show that the Respondent's employees taking steps to conclude grievance and appeal processes that the Claimant had submitted and in accordance with the Respondent's HR policies (1) amounts to detrimental treatment and/or (2)constitutes detrimental treatment because the Claimant had made a protected disclosure. As such, this claim has no reasonable prospect of success (rule 38) or in the alternative they have little reasonable prospect of success (rule 40).*

d. In respect of the Claimant's failure to make reasonable adjustments claims, any claim alleging that the Respondent should have referred the Claimant to occupational health as a reasonable adjustment will not succeed. Case law is clear that obtaining a medical report is not in itself a reasonable adjustment. It can make an employer better informed as to what steps, if any, will assist the employee, but of itself it does not alleviate any disadvantage. As such, this claim has no reasonable prospect of success (rule 38) or in the alternative it has little reasonable prospect of success (rule 40)."

37. The respondent's application for strike out/deposit was heard at heard at this hearing.

The Law

37. The statutory law relating to automatic unfair dismissal because of whistleblowing is contained in sections 103A and 43B of the Employment Rights Act 1996.

38. Section 103A of the Employment Rights Act 1996 states:

103A Protected disclosure.

"An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure."

39. A 'protected disclosure" is defined by section 43B of the Employment Rights Act 1996:

43B Disclosures qualifying for protection.

"(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs, or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed while obtaining legal advice.

(5) In this Part "the relevant failure", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

40. Claims of discrimination arising from disability and failure to make reasonable adjustments are set out in sections 15, 20 and 21 of the Equality Act 2010:

15. Discrimination arising from disability

(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

20. Duty to make adjustments

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

(6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

(7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

(8) A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.

(9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—

> *(a) removing the physical feature in question,*
>
> *(b) altering it, or*
>
> *(c) providing a reasonable means of avoiding it.*

(10) A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to—

> *(a) a feature arising from the design or construction of a building,*
>
> *(b) a feature of an approach to, exit from or access to a building,*
>
> *(c) a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or*
>
> *(d) any other physical element or quality.*

(11) A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.

(12) A reference in this section or an applicable Schedule to chattels is to be read,

in relation to Scotland, as a reference to moveable property.

(13) The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column.

21. Failure to comply with duty

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

41. The provisions relating to strike out and deposit orders in the Rules are set out in Rules 38 and 40:

Striking out

***38.** (1) The Tribunal may, on its own initiative or on the application of a party, strike out all or part of a claim, response or reply on any of the following grounds—*

(a) that it is scandalous or vexatious or has no reasonable prospect of success;

(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;

(c) for non-compliance with any of these Rules or with an order of the Tribunal;

(d) that it has not been actively pursued;

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim, response or reply (or the part to be struck out).

(2) A claim, response or reply may not be struck out unless the party advancing it has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

(3) Where a response is struck out, the effect is as if no response had been presented, as set out in rule 22 (effect of non-presentation or rejection of response, or case not contested).

(4) Where a reply is struck out, the effect is as if no reply had been presented, as set out in rule 22, as modified by rule 26(2) (replying to an employer's contract claim).

Deposit orders

40. *(1) Where at a preliminary hearing the Tribunal considers that any specific allegation or argument in a claim, response or reply has little reasonable prospect of success, it may make an order requiring a party ("the depositor") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument ("a deposit order").*

(2) The Tribunal must make reasonable enquiries into the depositor's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.

(3) The Tribunal's reasons for making the deposit order must be provided with the order and the depositor must be notified about the potential consequences of the order.

(4) If the depositor fails to pay the deposit by the date specified by the deposit order, the Tribunal must strike out the specific allegation or argument to which the deposit order relates.

(5) Where a response is struck out under paragraph 4, the effect is as if no response had been presented, as set out in rule 22 (effect of non-presentation or rejection of response, or case not contested).

(6) Where a reply is struck out under paragraph (4), the effect is as if no reply had been presented, as set out in rule 22, as modified by rule 26(2) (replying to an employer's contract claim).

(7) If the Tribunal following the making of a deposit order decides the specific allegation or argument against the depositor for substantially the reasons given in the deposit order—

(a)the depositor must be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 74 (when a costs order or a preparation time order may or must be made), unless the contrary is shown, and

(b)the deposit must be paid to the other party (or, if there is more than one, to such other party or parties as the Tribunal orders),

otherwise the deposit must be refunded.

(8) If a deposit has been paid to a party under paragraph (7)(b) and a costs order or preparation time order has been made against the depositor in favour of the party who received the deposit, the amount of the deposit must count towards the settlement of that order.

42. In his submissions, Mr Cooksey referenced the following cases:

    42.1. **Selkent Bus Co Ltd v Moore** [1996] ICR 836 (EAT) – leading authority on amendments to Employment Tribunal claims.

    42.2. **Cocking v Sandhurst** [1974] ICR 650 Referenced in the submissions in relation to amendment principles.

    42.3. **Vaughan v Modality Partnership** [2021] IRLR 97: Referenced in the submissions in relation to amendment principles.

    42.4. **Chandhok v Tirkey** [2015] ICR 527; [2015] IRLR 195 (EAT).

    42.5. **Fincham v HM Prison Service** UKEAT/0991/01.

    42.6. **Kilraine v London Borough of Wandsworth** [2018] EWCA Civ 1436.

    42.7. **Chesterton Global Ltd v Nurmohamed** [2017] EWCA Civ 979; [2018] ICR 731.

    42.8. **Mid Staffordshire General Hospitals NHS Trust v Cambridge** [2003] IRLR 566 (EAT).

    42.9. **Tarbuck v Sainsbury's Supermarkets Ltd** [2006] IRLR 664 (EAT).

    42.10. **Scottish & Southern Energy plc v Mackay** UKEATS/0075/06.

    42.11. **HM Prison Service v Johnson** [2007] IRLR 951 (EAT).

43. I considered all the statutory law, rules and case law before making my decision.

The Issues

44. The issues in the claim were agreed in discussions with the parties before I determined the claimant's application to amend and the respondent's application for strike out/deposit (following the guidance from the EAT in **Cox v Adecco**), using the draft List prepared by EJ Ayres:

The Issues

1. Unfair dismissal

1.1 The respondent admits that it dismissed the claimant.

1.2 Was the reason or principal reason for dismissal that the claimant made a protected disclosure?

If so, the claimant will be regarded as unfairly dismissed.

2. Remedy for unfair dismissal

2.1 Does the claimant wish to be reinstated to his previous employment?

2.2 Does the claimant wish to be re-engaged to comparable employment or other suitable employment?

2.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.

2.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.

2.5 What should the terms of the re-engagement order be?

2.6 If there is a compensatory award, how much should it be? The Tribunal will decide:

> *2.6.1 What financial losses has the dismissal caused the claimant?*
>
> *2.6.2 Has the claimant taken reasonable steps to replace his lost earnings, for example by looking for another job?*
>
> *2.6.3 If not, for what period of loss should the claimant be compensated?*
>
> *2.6.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?*
>
> *2.6.5 If so, should the claimant's compensation be reduced? By how much?*
>
> *2.6.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?*
>
> *2.6.7 Did the respondent or the claimant unreasonably fail to comply with it?*
>
> *2.6.8 If so, is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?*

2.6.9 If the claimant was unfairly dismissed, did he cause or contribute to dismissal by blameworthy conduct?

2.6.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

2.6.11 Does the statutory cap of fifty-two weeks' pay apply?

2.7 What basic award is payable to the claimant, if any?

2.8 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

3. Protected disclosures (to be decided at the Preliminary Hearing on 7 September 2026)

3.1 Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

3.1.1 What did the claimant say or write? When? To whom? The claimant says they made disclosures on three occasions:

3.1.1.1 2 May 2025 in an email to Rob Berry and Clive Prigden raising concerns about governance and staff management. The claimant says that he disclosed

information tending to show a breach of a legal obligation and danger to health and safety, and that the disclosure was made in the interests of the respondent's customers and tenants;

3.1.1.2 13 June 2025 in a formal grievance in which the claimant says he raised concerns about a toxic culture, exclusion, systematic governance failures and breach of GDPR. The claimant says that he disclosed information tending to show breaches of legal obligations and that the disclosure was made in the interests of the respondent's staff, tenants and regulators;

3.1.1.3 21 July 2025 in an email sent to the respondent about data protection that he says he sent to the ICO at a later date. The claimant *says that he disclosed information tending to show breaches of a legal obligation and affected all employees.*

3.1.2 Did he disclose information?

3.1.3 Did he believe the disclosure of information was made in the public interest?

3.1.4 Was that belief reasonable?

3.1.5 Did he believe it tended to show that:

3.1.5.1 a person had failed, was failing or was likely to fail to comply with any legal obligation; and/or

3.1.5.2 the health or safety of any individual had been, was being or was likely to be endangered?

3.1.6 Was that belief reasonable?

3.2 If the claimant made a qualifying disclosure, was it made:

3.2.1 to the claimant's employer; or

3.2.2 in the case of a disclosure to the Information Commissioner's Office was it made to a prescribed person as set out in section 43F of the Employment Rights Act 1996 or in the circumstances set out in section 43G of the Employment Rights Act 1996?

If so, it was a protected disclosure.

4. ***Detriment (Employment Rights Act 1996 section 48)***

4.1 Did the respondent do the following things:

4.1.1 In May 2025 did Clive Pridgeon stop communicating with the claimant?

4.1.2 In May 2025 did Clive Pridgeon send the claimant on a 5-hour round trip to drop a laptop off?

4.1.3 From the middle of May onwards did Clive Pridgeon exclude the claimant from meetings and marginalise him? The claimant says he was excluded from contract meetings, disrepair solicitor meetings and a meeting to discuss Awaab's law.

4.1.4 Did Clive Pridgeon arrange a probation meeting on 11 June 2025 with short notice and without any prior performance management?

4.1.5 From June 2025 onwards did Clive Pridgeon, Julie Doyle and Donna Chellenor fail to pause the probation review process despite there being 2 live grievances and an appeal?

4.1.6 At the end of July 2025 did Donna Chellenor and Phil Ison require the claimant to attend meetings at short notice?

4.1.7 From 16 July 2025 did Phil Ison, Julie Doyle, Donna Challenor and Rachel Challenor fail to make reasonable adjustments?

4.1.8 In the middle of July 2025 did Rachel Challenor help cover up the fact that Cathy Sentence was asked to disclose information in response to the claimant's Data Subject Access Request (DSAR)?

4.1.9 Did Eleanor Jacobson ask Cathy Sentence to disclose information in response to the claimant's DSAR?

4.1.10 Did Cathy Sentence disclose information in response to the claimant's DSAR despite being a named party in the grievance?

4.2 By doing so, did it subject the claimant to detriment?

4.3 If so, was it done on the ground that the claimant made a protected disclosure?

5. Remedy for Protected Disclosure Detriment

5.1 What financial losses has the detrimental treatment caused the claimant?

5.2 What injury to feelings has the detrimental treatment caused the claimant and how much compensation should be awarded for that?

5.3 Has the detrimental treatment caused the claimant personal injury and how much compensation should be awarded for that?

5.4 Is it just and equitable to award the claimant other compensation?

5.5 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

5.6 Did the respondent or the claimant unreasonably fail to comply with it?

5.7 If so, is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

5.8 Did the claimant cause or contribute to the detrimental treatment by their own actions and if so, would it be just and equitable to reduce the claimant's compensation? By what proportion?

5.9 Was the protected disclosure made in good faith?

5.10 If not, is it just and equitable to reduce the claimant's compensation? By what proportion, up to 25%?

6. Disability

6.1 The respondent concedes that the claimant met the definition of disability in section 6 of the Equality Act 2010 between March 2025 and August 2025 because of severe depression. The respondent denies that it had express or constructive knowledge of the claimant's disability.

7. Discrimination arising from disability (Equality Act 2010 section 15)

7.1 Did the respondent treat the claimant unfavourably by dismissing him?

7.2 Did the following things arise in consequence of the claimant's Disability:

> *7.2.1 The claimant's difficulty in engaging in meetings at short notice; and/or*
>
> *7.2.2 The claimant's difficulty in performing his role without reasonable adjustments in place?*

7.3 Was the unfavourable treatment because of any of those things?

7.4 Was the treatment a proportionate means of achieving a legitimate aim? The respondent must set out any legitimate aims relied upon.

7.5 The Tribunal will decide in particular:

7.5.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

7.5.2 could something less discriminatory have been done instead;

7.5.3 how should the needs of the claimant and the respondent be balanced?

7.6 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

8. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

8.1 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

8.2 A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs:

8.2.1 A practice of arranging meetings at short notice;

8.2.2 A practice of not referring employees to occupational health when a GP recommends a referral;

8.2.3 A practice of requiring communication to take place verbally, including by Teams meetings and telephone calls; and/or

8.2.4 A practice of requiring the claimant to have contact with individuals named in his grievance?

8.3 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that:

8.3.1 He suffered a deterioration in his mental health and suicidal ideation;

and

8.3.2 Reasonable adjustments were not properly considered?

8.4 Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

8.5 What steps could have been taken to avoid the disadvantage? The claimant suggests:

8.5.1 Providing him with one- or two-weeks' notice of any meeting;

8.5.2 Referring him to occupational health;

8.5.3 Communicating by email; and

8.5.4 Putting in place arrangements to ensure that the claimant did not have contact with the individuals named in the grievance.

8.6 Was it reasonable for the respondent to have to take those steps and when?

8.7 Did the respondent fail to take those steps?

9. Remedy for discrimination

9.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

9.2 What financial losses has the discrimination caused the claimant?

9.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

9.4 If not, for what period of loss should the claimant be compensated?

9.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

9.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

9.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

9.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

9.9 Did the respondent or the claimant unreasonably fail to comply with it?

9.10 If so, is it just and equitable to increase or decrease any award payable to the claimant?

9.11 By what proportion, up to 25%?

9.12 Should interest be awarded? How much?

45. Following the determination of the claimant's successful application to amend and the respondent's successful application for strike out, the List of Issues that will proceed to the final hearing is as follows:

The Issues

1. Disability

1.1. The respondent concedes that the claimant met the definition of disability in section 6 of the Equality Act 2010 between March 2025 and August 2025 because of severe depression. The respondent denies that it had express or constructive knowledge of the claimant's disability.

2. Discrimination arising from disability (Equality Act 2010 section 15)

2.1. Did the respondent treat the claimant unfavourably by dismissing him?

2.2. Did the following things arise in consequence of the claimant's disability:

2.2.1. The claimant's difficulty in engaging in meetings at short notice; and/or

2.2.2. The claimant's difficulty in performing his role without reasonable adjustments in place?

2.3. Was the unfavourable treatment because of any of those things?

2.4. Was the treatment a proportionate means of achieving a legitimate aim? The respondent must set out any legitimate aims relied upon.

2.5. The Tribunal will decide in particular:

2.5.1. was the treatment an appropriate and reasonably necessary way to achieve those aims;

2.5.2. could something less discriminatory have been done instead;

2.5.3. how should the needs of the claimant and the respondent be balanced?

2.6. Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

3. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

3.1. Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

3.2. A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs:

3.2.1. A practice of arranging meetings at short notice;

3.2.2. A practice of requiring communication to take place verbally, including by Teams meetings and telephone calls; and/or

3.2.3. A practice of requiring the claimant to have contact with individuals named in his grievance?

3.3. Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that:

3.3.1. He suffered a deterioration in his mental health and suicidal ideation; and

3.3.2. Reasonable adjustments were not properly considered?

3.4. Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

3.5. What steps could have been taken to avoid the disadvantage? The claimant suggests:

3.5.1. Providing him with one- or two-weeks' notice of any meeting;

3.5.2. Referring him to occupational health;

3.5.3. Communicating by email; and

3.5.4. Putting in place arrangements to ensure that the claimant did not have contact with the individuals named in the grievance.

3.6. Was it reasonable for the respondent to have to take those steps and when?

3.7. Did the respondent fail to take those steps?

4. Remedy for discrimination

4.1. Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

4.2. What financial losses has the discrimination caused the claimant?

4.3. Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

4.4. If not, for what period of loss should the claimant be compensated?

4.5. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

4.6. *Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?*

4.7. *Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?*

4.8. *Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?*

4.9. *Did the respondent or the claimant unreasonably fail to comply with it?*

4.10. *If so, is it just and equitable to increase or decrease any award payable to the claimant?*

4.11. *By what proportion, up to 25%?*

4.12. *Should interest be awarded? How much?*

46. If either of the parties disagrees with the revised List of Issues above, they must write to the other side and the Tribunal by **4:00pm on Monday 27 July 2026**, setting out what objection they have to the List and what they suggest the List should contain. If they do not, the list will be treated as final unless the Tribunal decides otherwise.

The Hearing

47. The hearing started at 10:00am. The claimant represented himself. The respondent was represented by Mr Cooksey of Counsel. An observer from the respondent attended, as did a trainee solicitor for the respondent's solicitors.

48. As the claimant was accepted by the respondent as meeting the definition of disability because of severe depression highest and considered the Employment Tribunal's Presidential Guidance: Vulnerable parties and witnesses in Employment Tribunal proceedings (22 April 2020) and the Equal Treatment Bench Book on vulnerable people, litigants in person, and mental illness when conducting this hearing.

49. The claimant is unrepresented. I reminded him that the Tribunal operates on a set of Rules (I have set out the link to those Rules below). Rule 3 sets out the overriding objective of the Tribunal Rules (their main purpose), which is to deal with cases justly and fairly. It is reproduced here:

> ***Overriding objective***
>
> *3.— (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—

(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,

(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.

(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.

50. The respondent produced an agreed bundle of 253 pages. If I refer to any pages in the bundle, I will note the relevant page numbers in square brackets. Mr Cooksey had produced a lengthy set of submissions and a note on the law. The claimant had not had a chance to read either in any detail, so we took a 3o minute break from 10:15am to 10:45am for him to read the documents.

51. On the resumption, we discussed the List of Issues. EJ Ayre had set out a draft List, but the parties had not made any progress to finalising the List. We worked to finalise the List as set out above.

52. The respondent had not yet set out what its proportionate means of achieving a legitimate aim was in the discrimination arising from disability claim. It shall do so by writing to the Tribunal and the claimant by **4:00pm on Monday 13 July 2026**.

53. I heard the claimant's application for amendment from 11:20am to 11:30am. I asked the parties to return at 1:30pm to hear my determination.

54. As can be seen above, I allowed the claimant's application to amend.

55. I then heard the respondent's application for strike out/deposit and the claimant's response. At 1:45pm, I retired to consider my decision and asked the parties to return at 3:45pm. I returned at 3:45pm to deliver my decision as can be seen above.

56. I then converted the hearing to a preliminary hearing for case management.

Findings

Amendment

57. After reading correspondence from the claimant about which amendments he sought, I confirmed with him that he did not wish to bring any claims of post-termination whistleblowing detriment or victimisation. He confirmed that this was the case. That left the three protected disclosures that he contended for on:

    57.1. 2 May 2025; and

    57.2. 13 June 2025.

58. The first disclosure dated 2 May 2025 [193-194] stated:

> "*Its become apparent in my first few weeks there are some fundamental issues with cross over of management of staff, people unsure who to report to which requires addressing and i would like to present my thoughts on a structure that will change. If you wish this formalising in a report/presentation please advise.*
>
> *Senior Disrepair Manager (East/West/Central/South) - Myself to pick up authorisations, lead on contractor management, commission and agree disrepair reports which have overall accountability for reducing numbers and protecting risk to the business.*
>
> *Risks to other departments: None*
>
> *~~Disrepair Surveyor (East/West/Central)~~ - We remove this role given the reduction in cases, and review this with potentially providing agency staff if needed on an ad-hoc basis should we require to bring this function in house temporarily.*
>
> *Risks to other departments: None*
>
> *Disrepair Officer (East/West/Central) - Should be directly line managed by SDM; Promote and reward Antonia for her contribution to the business is a role more reflective of her current posts/duties and aspirations. This role would be a critical in assisting myself with the legal expertise.*
>
> *We have significant risk to the business if Antonia leaves - and current markets given disrepair mean there are an abundance of alternate opportunities should she choose to pursue them.*
>
> *Risks to other departments: None*
>
> *Disrepair Administrator (East/West/Central/South) - Tamara - . There are two officers from*

Cathy's team that are assisting with disclosures currently, The entry junior level admin should be able to relieve pressure on the disrepair officer and remove some of the menial tasks that are currently eating up into the time pressure and resource of the current "disrepair co-Ordinator role'. Raising orders etc.

Risks to other departments: This would need agreement with Sue Bland current line manager of Tamara and impact of removing the addition ex GU duties and things being asked to pick up outside disrepair, but a disrepair surveyor should be just that only picking up things to help out on an -basis and the current GU case load is quite low.

Disrepair Surveyor (South) - Scott - We need to clarify here Scott's role and what hes doing - as he is covering duties outside of disrepair within former GU and under different line management, We should remove these additional duties if he is a disrepair surveyor and propose he assists with more ex Longhurst based field issues (however he has indicated an unwillingness to travel) which we need to be mindful of.

Risks to other departments: This would need agreement with Sue Bland current line manager of Scott

and tamara and impact of removing the addition ex GU duties and things being asked to pick up outside disrepair, but again should shift the focus to just disrepair based issues."

59. The second disclosure dated 13 June 2025 [195] stated:

"*Please find attached my formal grievance submission regarding serious and ongoing concerns affecting my role as Senior Disrepair Manager. These issues relate to managerial conduct, breaches of agreed working arrangements, procedural irregularities, and behaviours that I believe undermine my ability to carry out my responsibilities safely and effectively.*

In line with the grievance policy and given the gravity of the concerns raised—particularly those involving individuals central to my probation process—I respectfully request that the probation review scheduled for 20 June be paused pending a full investigation.

Furthermore, due to the impact the current environment is having on my mental health and professional integrity, I am also requesting to be considered for gardening leave during the course of this investigation. This would support a fair process, avoid ongoing distress, and allow me to fully engage with the grievance investigation without further deterioration in working relationships.

I have done everything possible to raise concerns constructively and in good faith, and I remain committed to resolving matters through the appropriate channels.

*Please confirm receipt of this grievance and advise on next steps for investigation and response. I would request at this stage that all communications are forwarded to [*redacted by Judge Shore*] and also my* *number for communication you should have correctly as [*redacted by Judge Shore*].*"

60. The claimant asked to change the third protected disclosure he relied upon from the one mentioned above on 19 July 2025 to on dated 21 July 2025 to Rachel Challinor of the respondent and six others raising concerns about the way that the claimant's DSAR had been handled [245-246]. The email stated:

"*Dear Data Protection/Governance and HR,*

I am formally escalating a serious concern regarding the handling of my Subject Access Request (SAR), following the discovery of a scheduled meeting titled "SAR meeting to discuss documentation , publicly visible in Cathy Sentence's Outlook calendar for Tuesday 22nd July 2025. (Evidence Attached)

This meeting explicitly refers to my SAR and name in the title and body and confirms that Cathy Sentance - a central subject of my grievance, grievance appeal, and live data protection complaint - is being asked to assist in the collation of documentation relating to herself.

I must be unequivocally clear: this situation is procedurally indefensible.

1. Conflict of Interest and Integrity Failure

It is frankly absurd that someone named in the complaint and SAR is being invited to select, provide, or potentially filter evidence that concerns their own conduct. The risk of selective disclosure or manipulation is self-evident - no reasonable observer could consider this fair, impartial, or lawful. The likelihood that Cathy Sentance would tailor what is shared to fit a personal or institutional narrative is not hypothetical; it is a foreseeable and avoidable breach of integrity in the evidence-gathering process.

2. Apparent Abdication of Responsibility by Data Protection

Why is the data protection team not leading from the front in collating this information independently? This is precisely what the DPO is empowered to do: act as a neutral party in conflicted or high-risk scenarios. Instead, the process appears to rely on a subject of the complaint to self-report - a practice that violates both the spirit and letter of Article 5 of the UK GDPR.

The fact that this meeting was visible publicly compounds the issue not only is my name exposed in connection with an ongoing SAR, but the organisation has also allowed a compromised process to be documented in plain sight, further undermining trust and privacy protections.

3. Procedural Impropriety and Pattern of Evasion

It is also important to state that, while my GP-advised reasonable adjustments have not yet been officially confirmed as received, I have clearly and repeatedly stated that Cathy Sentance must not be involved *in any aspect of the ongoing SAR or grievance-related processes. To proceed in the opposite direction - despite these express boundaries - can only be seen as a wilful disregard of basic procedural safeguards.*

Taken together with the existing failures I have already raised via my formal data protection and governance complaints, this development increasingly suggests an attempt to control or sanitise what is ultimately disclosed - an appearance of cover-up that is not sustainable under scrutiny, nor legally defensible.

4. Immediate Actions Required

I am therefore demanding the following as a matter of urgency:

Immediate cancellation or internal redaction of the publicly visible SAR meeting involving Cathy Sentance;

Complete removal of Cathy Sentance from any role in locating, reviewing, or providing material relevant to my SAR;

Full oversight of the SAR evidence-gathering process by the DPO or a suitably independent party unconnected to my complaint;

Confirmation that this incident will be added to the record of my internal data protection complaint and whistleblowing submission, with a view to possible ICO escalation if this is not immediately rectified.

Please respond by COB Wednesday 23rd July with confirmation of how this matter will be resolved."

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

> "*... The claim, as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely upon their say so. Instead, it serves not only a useful but a necessary function. It sets out the essential case. It is that to which a Respondent is required to respond. A Respondent is not required to answer a witness statement, nor a document, but the claims made – meaning, under the Rules of Procedure 2013, the claim as set out in the ET1.*"

62. The authorities regarding amendments are set out in several cases, but the leading authorities are **Selkent Bus Co v Moore** [1996] IRLR 661 and **Vaughan v Modality Partnership** [2021] IRLR 97.

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

(4) *Whenever the discretion to grant an amendment is invoked, the Tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it.*

(5) What are the relevant circumstances? It is impossible and undesirable to attempt to list them exhaustively, but the following are certainly relevant:

(a) The nature of the amendment. Applications to amend are of many different kinds, ranging, on the one hand, from the correction of clerical and typing errors, the addition of factual details to existing allegations and the addition or substitution of other labels of facts already pleaded to, on the other hand, the making of entirely new factual allegations which change the basis of the existing claim. The Tribunal has to decide whether the amendment sought is one of a minor matter or is a substantial alteration pleading a new cause of action.

(b) *The applicability of time limits. If a new complaint or cause of action is proposed to be added by way of amendment, it is essential for the Tribunal to consider whether the complaint is out of time and, if so, whether the time limit should be extended under the applicable statutory provisions, e.g., in the case of unfair dismissal, Section 67 of the 1978 Act.*

(c) *The timing and manner of the application. [An application should not be refused solely because there has been a delay in making it. There are no time limits laid down in the Rules for the making of amendments. The amendments may be made at any time – before, at, even after the hearing of the case. Delay in making the application is, however, a discretionary factor. It is relevant to consider why the application was not made earlier and why it is now being made; for example, the discovery of new facts or new information appearing from documents disclosed in discovery. Whenever taking any factors into account, paramount considerations are the relative injustice and hardship involved in refusing or granting an amendment. Questions of delay, as a result of adjournments and additional costs, particularly if they are unlikely to be recovered by the successful party, are relevant in reaching a decision].".*

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

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

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

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

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

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

- a minor amendment may correct an error that could cause a claimant great prejudice if the amendment were refused because a vital component of a claim would be missing;

- an amendment may result in the respondent suffering prejudice because they have to face a cause of action that would have been dismissed as out of time had it been brought as a new claim;

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

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

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

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

65.1. I find that the claimant made no specific reference to any of the protected disclosures he now relies upon in his ET1 but he clearly set out his allegation that undefined protected disclosures were the cause of detriment and dismissal.

65.2. The claimant submitted that he thought he had mentioned the disclosures in his ET1. He also said he was very ill at the time he presented his claim and reminded me that he is not a lawyer. I note that the respondent now concedes that the claimant met the definition of disability.

65.3. I find that this is, in effect an exercise of providing further information. I also find that it was not reasonably practicable for the claimant to have submitted details of the disclosures he now alleges because of his mental health at the time. I find that he submitted the details within a reasonable period after the time limit expired.

65.4. The claimant was advised by EJ Ayre that he needed to apply to amend his claim and provided the necessary documents to do so.

65.5. The real practical consequences of granting the application would be relatively minor. The respondent has always known that it would face a whistleblowing claim and must have expected that the claimant would provide details of the protected disclosures that he relies upon. He has now done that. The respondent does not allege that it will be prejudiced by the effluxion of time, as all the PIDs occurred between 2 May and 21 July 2025.

65.6. Following the guidance of HHJ Tayler in **Vaughan**, I find that the amendment sought is a minor amendment as it adds necessary detail to claims brought in the ET1. Rejecting the application would /leave the claimant with no claim of unfair dismissal or whistleblowing detriment when he clearly indicated that he was making such claims in his ET1.

65.7. I find the PIDs contended for to have challenges, but these can be dealt with in the next stage of this hearing.

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

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

66. I grant the amendment sought.

Strike out

Whistleblowing

67. Mr Cooksey confirmed that the respondent's application regarding whistleblowing was based solely on the basis that the claimant's claims of whistleblowing have no reasonable prospects of success. I agree with the respondent's submissions.

First Disclosure – 2 May 2025

68. I agree with Mr Cooksey's submissions in their entirety. The claimant did not disclose information that tended to show what he now alleges his email shows: a breach of a legal obligation and danger to health and safety.

69. The claimant's disclosure was a proposal to reorganise his department. It makes no mention of health and safety or breach of a legal obligation, as are required by the precedent case of **Fincham**. Further, I cannot find any public interest in the disclosure and therefore find that a final hearing has no reasonable prospect of finding that this disclosure was a protected disclosure.

Second Disclosure – 13 June 2025

70. Again, I agree with all Mr Cooksey's submissions. The claimant's description of the document as containing concerns about governance failures. Management conduct and systemic issues affecting compliance within the respondent is not an accurate description of the documents that I read. The claimant's grievance of 11 June 2025 does not disclosed information that tends to show a breach of any of the six matters in section 43B, and I find that there is no reasonable prospect of a final hearing finding that the documents are a protected disclosure.

Third Disclosure – 21 July 2026

71. The third disclosure discloses nothing that could be said to be a protected disclosure. There is no identification of information that tends to show that one of the matters in section 43B have been engaged. I find there is no public interest demonstrated. I find that there is no reasonable prospect of a final hearing making a finding that the document is a protected disclosure.

72. The claimant asked me to allow the claims through on the basis that the facts need to be determined at a final hearing. I had all the facts before me on the central question of whether the claimant had made protected disclosures. There was nothing to add to what I had before me.

73. I find that the claimant has no reasonable prospect of showing he made the protected disclosures alleged and therefore, his claim of automatic unfair dismissal under section 103A and detriment under section 47B have no reasonable prospect of success. All claims of automatic unfair dismissal and detriment are dismissed.

Reasonable Adjustments

74. The respondent sought a strike out of one of the claimant's claims of failure to make reasonable adjustments – the second of the claims at paragraph 8.2.2. of EJ Ayre's draft List of Issues [142]. This was a complaint that the claimant was not referred to Occupational Health ("OH"), although his GP had recommended a referral.

75. I completely agree with Mr Cooksey's legal submissions at paragraphs 96 to 101 of his submissions. It is established law that there is no freestanding reasonable adjustment to carry out an OH assessment. I therefore find that the claimant has no reasonable prospect of succeeding with this claim and it is struck out.

Deposit

76. If I am wrong about the strike outs, then I would have imposed a deposit of £100 for each of the four allegations that were the subject of the strike outs above. I heard the claimant's evidence about his means before considering what deposit I would have imposed.

Summary

77. As I have struck out a sizeable part of the claimant's claim, I converted the hearing to a preliminary hearing to make case management orders. They are contained in a separate document.

Approved by
Employment Judge Shore
Date: 2 July 2026