



EMPLOYMENT TRIBUNALS

Claimant: Mr Clinton Melbourne- Hurley

Respondent: Lanes-I Limited

RECORD OF A PRELIMINARY HEARING

Heard at: Reading (CVP) **On:** 18 June 2026

Before: First Tier Tribunal Judge Davison sitting as an Employment Judge

Appearances

For the claimant: In Person

For the respondent: Mr C Devlin, Counsel

JUDGMENT

1. The claimant's application to amend his claim is allowed in part.
2. The respondent's application for strike out is granted.
3. The claimant's application for anonymity is refused.

Reasons

Background

1. The claim form was presented on 18 December 2024. The claimant is pursuing discrimination and whistleblowing claims against the respondent. Attached to the ET1 was a 13 page particulars of claim. On 20 June 2025 the claimant was ordered to file better particulars of his claims. On 14 July 2025 a 45 page document was submitted containing his further and better particulars. It was the respondent's

position that these further and better particulars significantly expanded the legal and factual issues to be considered by the Tribunal.

2. There has already been fairly extensive case management. The claimant has indicated he wished to apply to amend his claim. On 13 February 2026 EJ Hawksworth made extensive Case Management Orders regarding the hearing and set out the matters needed to be considered at this Public Preliminary Hearing (bundle page 168ff) the complaints and issues were set out in some detail at page 172ff. The timeframes by which the claimant had to make applications for amendment and the respondent needed to reply to the same were all set out. The application to amend, the application to strike out/deposit orders and the application for anonymity are all addressed in this Judgment. Case Management Orders for the onward progression of this matter have been provided separately.

Application to amend

3. In the case of Selkent Bus Company Limited v Moore [1996] ICR 836 the Employment Appeal Tribunal (“EAT”) set out the test to be applied by a Tribunal in deciding whether to exercise its discretion to grant an amendment. It said 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. The EAT in Selkent also set out a list of factors which are certainly relevant, which are usually referred to as the “Selkent factors”. In brief they are:
 - (1) The nature of the amendment i.e. whether the amendment sought is one of the minor matters or is a substantive alteration pleading a new cause of action;
 - (2) The applicability of time limits. If a new complaint of cause of action is proposed to be added by way of amendment it is essential for the Tribunal to consider whether that complaint is out of time and if so whether the time limit should be extended; and
 - (3) 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 making amendments, but delay is 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).
4. In the case of Vaughan v Modality Partnership UKEAT/0147/20/BA the EAT reminded parties and Tribunals that the core test in considering applications to amend is the balance of injustice and hardship in allowing or refusing the application. The exercise starts with the parties making submissions on the specific practical consequences of allowing or refusing the amendment. That balancing exercise is fundamental. The Selkent factors should not be treated as if they are a list to be checked off.

5. The issue of amendment applications was more recently discussed in CX v Secretary of State for Justice [2025] EAT 114.
6. All the above guidance has been considered in assessing this application. Analysis of the practical impact of granting or refusing the application must be undertaken. In determining whether to grant an application to amend, an employment tribunal must always carry out a careful balancing exercise of all the relevant factors, having regard to the interests of justice and to the relative hardship that would be caused to the parties by granting or refusing the amendment.
7. The hardship and injustice test is a balancing exercise. Lady Smith noted in Trimble and anor v North Lanarkshire Council and anor EATS 0048/12 that it is inevitable that each party will point to there being a downside for them if the proposed amendment is allowed or not allowed.
8. I have considered the original ET 1 claim form and the documents provided in support of the application to amend. In submissions the claimant stated that the allegations now made are not wholly new matters. They were pleaded in substance in the ET1 and detail to these claims has subsequently been added.
9. The Presidential Guidance on General Case Management for England and Wales notes the *Selkent* provisions are not intended to be an exhaustive list. There may thus be additional factors to consider in any particular case (Conteh v First Security Guards Ltd EAT 0144/16).
10. In Langstaff J in Chandhok v Tirkey [2015] ICR 527 emphasised the importance of the claim form in setting out a claimant's case:

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

17. ...The ET1 and ET3 have an important function in ensuring that a claim is brought, and responded to, within stringent time limits. If a "claim" or a "case" is to be understood as being far wider than that which is set out in the ET1 or ET3, it would be open to a litigant after the expiry of any relevant time limit to assert that the case now put had all along been made, because it was "their case", and in order to argue that the time limit had no application to that case could point to other documents or statements, not contained within the claim form. Such an approach defeats the purpose of permitting or denying amendments; it allows issues to be based on shifting sands; it ultimately denies that which clear-headed

justice most needs, which is focus. It is an enemy of identifying, and in the light of the identification resolving, the central issues in dispute.'

11. The reasoning in Chandhok was approved by the Court of Appeal in Moustache v Chelsea and Westminster Hospital NHS Foundation Trust [2025] ICR 1231. At §34:

"...the issues raised by the parties are those which emerge clearly from an objective analysis of their statements of case. Identification of the issues does not involve reference to other documents which do not have the status of pleadings and come later."

12. In LB Ealing v Peace [2026] EAT 81, HHJ Tayler held that the first instance tribunal had erred in concluding that the respondent would not suffer prejudice because it had advance notice of new allegations in a further and better particulars document. HHJ Tayler held that the tribunal was required to analyse whether there were new complaints that had not been asserted in the claim and, in respect of new allegations, to balance the injustice and hardship of allowing or refusing the amendment.
13. The matters pleaded in the ET1 and further and better particulars are summarised in paragraphs 34 and 35 of the respondent's written submissions prepared for today's hearing.
14. It is noted in paragraph 36 of the submissions that the respondent does not object to the claimant being granted permission to advance a claim of victimisation insofar as the factual allegations were already pleaded in the ET1 as allegations of whistleblowing detriment. The respondent accepted that this was a "mere relabelling of facts already pleaded and causes limited prejudice" to the respondent. These aspects of the application to amend are therefore granted.
15. Paragraph 38 of the respondent's submissions addresses, what the respondent has categorised as new factual allegations. The ET1 has raised 20 discrete factual allegations, and the further and better particulars are said to introduce a further 15 factual allegations and expand the number of relevant witnesses. (The additional witnesses are listed in paragraph 38 (b)).
16. In LB Ealing & Others v Pauline Peace [2026] EAT 81 it was held:

'32. Unfortunately, the analysis of the Employment Tribunal was wholly inadequate, the appeal must be allowed. The Employment Judge concluded that because the respondents had advance notice of the matters in the document misleadingly titled "Particulars of Claim" (which I will refer to as the additional particulars), they would not suffer any prejudice because there would be time to respond. There was no real analysis of whether there were new complaints that had not been asserted in the claim form and which could only be introduced by way of amendment. In respect of complaints that would require an amendment, the Employment Judge was required to balance the injustice or hardship which might be caused to the parties were the amendment allowed or refused and, so

far as relevant, consider the nature of the amendment, applicability of time limits and the timing and manner of the application.'

17. The claimant's application to amend is set out in detail at page 225ff. In this he acknowledges that the amendment allegations were not specifically pleaded in the ET1 (see by way of example bundle page 225 paragraph 15.1). The further and better particulars do therefore raise new factual matters against new individuals. I find that the claimant cannot simply state he was discriminated against in an ET1 and then, some months after the event, provide the details of this discrimination. He cannot simply claim that the details now provided are those that were envisaged or intended to be provided. The claimant gave 13 pages of detailed submissions when his ET1 was filed. No valid explanation has been provided as to why the more specific and different factual claims that were raised in his further and better particulars were not pleaded earlier. The factual issues that the claimant seeks to rely on are not facts that occurred post the filing of his ET1. There is therefore no reason why they should not have been included in his initial pleadings. Some of the employees that the claimant now seeks to make specific allegations against are no longer in the employment of the respondent.
18. The claimant already has wide ranging claims against the respondent. The respondent has accepted that the claims of victimisation, where they dovetail with the factual matters pleaded in the ET1 on whistleblowing detriment, can be amended.
19. I find to refuse the application to amend causes no real prejudice to the claimant. The balance of prejudice falls against the respondent. There is no good explanation as to why the factual matters now pleaded were not raised at an earlier stage. From the guidance above it is clear my focus should be on the ET1, the matters originally pleaded and the claims now advanced. I find the arguments advanced are exactly the type of 'shifting sands' arguments that Chandok precludes. The respondent has set out both in the oral submissions advanced and in their letter at bundle page 210 the criticisms of the claims now advanced. Having considered these individual criticisms of the claims now advanced against the original ET1 I find these are new matters.
20. The application to amend is of a significant nature. The claimant seeks to add 7 new allegations of direct race discrimination and/or harassment. He is already pursuing 15 allegations of harassment/ discrimination. If the application to amend were allowed, the list would increase to 22 allegations. The new allegations do not relate to the same individuals who are involved in the allegations which are currently before the Tribunal, and can fairly be characterised as more examples of alleged discriminatory treatment by others and they involve substantially different areas of enquiry compared to the old allegations.
21. Allowing the application would put the respondents to additional cost, both in amending their response and in attending what would likely be a lengthier final hearing. Whilst some of that prejudice might reasonably be mitigated by a costs order, the claimant is not working.

22. The claimant was able to draft a detailed document setting out a significant number of allegations of discrimination. It is likely, in my view, that these allegations were those which were the most important to him.
23. The new allegations are not referenced specifically in the claimant's ET1. The respondent was therefore prevented from investigating the allegations contemporaneously, or indeed until at the earliest when the further and better particulars were proffered. That delay will inevitably impact on the level of detail and cogency of the evidence the respondent can be expected to give in respect of those allegations.
24. I consider that allowing the amendment would place the respondent at a significant prejudice.
25. By contrast, I do not consider that there is any significant prejudice to the claimant in refusing the application. The claimant already has extensive allegations of before the Tribunal concerning actions or inactions of the respondent. Allowing the amendment would not increase, in any material way, the compensation the claimant is likely to receive if he were to succeed in his claims. The claimant can reference the new allegations as background evidence or context within his witness statement.
26. Taking all relevant factors into account, and balancing the likely prejudice caused to each party by allowing or refusing the application, I refused it.

Application to strike out / deposit orders

27. The respondent sets out in the submissions from paragraph 40 the specific paragraphs which they seek to be struck out from the list of issues or for deposit orders to be granted. The respondent sets out the relevant legal requirements/ considerations in paragraph 19 of the submission. The claimant's response to the application to strike out is at page 238 of the bundle provided for the hearing.
28. In assessing whether to strike out a claim must be considered at its highest. A discrimination claim has been raised and these are invariably fact sensitive. A determination that such a claim has no prospects of success is therefore very difficult to make at a preliminary stage having not heard any evidence.
29. However, the claimant did not assert that the facts as recorded by the respondent are in any way incorrect. The claimant was, at least in part, inviting the Tribunal to keep the matters listed live and for consideration as the evidence given in the hearing may give substance to the claims. However, a claim can be struck out if the claimant has failed to establish a prima facie case. I must therefore consider whether the claim is scandalous, vexatious or has no reasonable prospects of success and if either of these three apply whether to exercise the discretion to strike out.

30. For ease of reference I will refer to the issues as set out in the respondent's submission in paragraph 40. Some of the claims have not been admitted given my findings are set out above. For completeness I have addressed each application to strike out separately.
31. 40(a) – the events complained of happened in December 23. They are therefore approximately nine months out of time. The named individual left the respondent's employment in January 2024. I therefore find there is no reasonable prospect of the claimant establishing that the alleged conduct of the named individual on one date in December 2023 was part of conduct extending over a period within the meaning of section 123 of the Equality Act. This claim therefore has no reasonable prospects of success on the accepted facts, and whilst it may be background to the claims before the Tribunal which the claimant can set out in a witness statement, I find it is appropriate to exercise discretion and strike out these aspects of the claim.
32. 40(b) - there is no evidence to state that the named individual is in the employment of the respondent and so there is no reasonable prospect of the claimant establishing that the respondent is vicariously liable for this individual's actions. Further the pleaded case does not set out that the alleged comments made related to race or were less favourable treatment because of race. I find it appropriate to exercise discretion strike out these aspects of the claim.
33. 40 (c) and (d) and (e) - no facts have been advanced from which the Tribunal could infer that the named individuals were allegedly instructing the claimant to dismiss colleagues was conduct related to race. Nor has the claimant advanced facts from which a Tribunal could infer that when he was placed on a PIP was conduct related to race. The claimant has not alleged a difference in protected characteristic and a difference in treatment. This is required for a claim to have a reasonable prospect of success. In the absence of the same I find it appropriate to exercise discretion and strike out these aspects of the claim.
34. 40(f) - the claimant has provided no dates for these allegations. The claimant has provided no names of individuals who are said to have made the comments. The Tribunal could not therefore be sure that the comments were made in time. The Tribunal could not be sure who had made the comments and whether these comments were made by an employee of the respondent/ someone whom the tribunal could find the respondent liable for their actions. There are therefore no reasonable prospects of this claim being upheld and I find it appropriate to exercise discretion and strike out this matter.
35. 40 (g) and (h) - No facts have been advanced from which a Tribunal could infer that the conduct was less favourable treatment relating to race. The claimant has not alleged a difference in a protected characteristic and the difference in treatment. I therefore find these claims have no realistic prospect of success and it is appropriate to strike out.
36. 40(i) –the claimant has provided no dates for these allegations. The claimant has provided no names of individuals who are said to have made the comments. The

Tribunal could not therefore be sure that the comments were made in time. The Tribunal could not be sure who had made the comments and whether these comments were made by an employee of the respondent. There is therefore no reasonable prospects of this claim being upheld and I find it appropriate to exercise discretion and strike out this matter.

37. 40(j) - the alleged comments are set out at bundle page 215. I do not find it is reasonably arguable, even if the claimant proves that these comments were made, that this incident would have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. Again these facts can be set out in a witness statement as context to the other matters pleaded for consideration. I find it appropriate to exercise discretion strike out this allegation.
38. 40(k) - the claim advanced is inadequately particularised. Despite the passage of time it has not been pleaded which named individuals are said to have made the comments. It is not pleaded which named individuals have "warned" the claimant. Nor what is meant by a hostile environment being created and by whom. I find it appropriate to strike out these allegations for having no reasonable prospect of success.
39. 40(l) - the claimant has alleged that when the respondent's Human Resources team asked for clarification or elaboration on the points raised that this is a detriment. I do not find asking for clarification to amount to a detriment. This allegation has no real reasonable prospects of success and is struck out.
40. 40(m) - the allegation advanced, as set out in the bundle at page 178, is that the respondent had not replied to an email. This is factually inaccurate. This factual inaccuracy was accepted by the claimant at the hearing. The claimant's position was then changed to say that the detailed response sent by the respondent did not address all the issues that he wished to have addressed. There have been several case management hearings. At bundle page 171 paragraph 26, it was made clear that if the list of issues was wrong either party need to write within 28 days. The claimant had not done so. The claimant in oral submissions today was seeking to amend this aspect of his claim from there having been no response to there having been a partial and incomplete response about which he took issue. I find the claim as pleaded had no reasonable prospects of success as it was factually inaccurate. At such a late stage in the process I have not found it appropriate to give permission for this claim to be amended. I therefore strike out the allegation and find it to be a reasonable exercise of discretion to do so.

Application for anonymity

41. The claimant had submitted a witness statement (bundle page 153) and set out in an email of 26 January 2026 (bundle 138) his reasons for seeking anonymity. In oral evidence he stated that he feared retaliation, a danger to his life and that all matters had caused a serious detriment.

42. Again the respondent's submission sets out the questions to be considered in considering whether to grant anonymity (paragraphs 29 and 30). It is a balancing exercise between the principle of open justice and an individual's Article 8 rights. There is a burden upon the claimant, and clear and cogent evidence is required. The claimant needs to show that his Article 8 rights are engaged. I find there is no sensitive or personal information in respect of which the claimant has a reasonable expectation of privacy. Having reviewed the evidence, I find this to be a standard claim of discrimination and whistleblowing. No evidence has been advanced by the claimant to support the contention that failing to grant anonymity would adversely impact his mental health, personal safety or put his life at risk of reprisal if his identity were made public.
43. I find having considered the above that the claimant's Article 8 rights are not engaged. There is therefore no reason to grant anonymity
44. If I were wrong in this first question, I would need to consider the balance. I find there is no clear and cogent evidence of the risk of harm that the claimant alleges. The claimant has stated that he fears retaliation and detriment. The claims he has advanced are against various members of the respondent's staff. These individuals know the claimant and know of the allegations he has made. They will have to prepare witness statements for the purposes of the final hearing. There is therefore nothing to be gained in seeking to anonymize the claimant as the claimant is well known to these individuals. The claim is for whistleblowing and discrimination. The claims do not relate to other members of the public. In considering all matters I find the balance falls against making a privacy order.
45. For completeness the case management orders set out that the respondent will finalise the list of issues in light of my findings as set out above on the applications to amend and strike out. This finalised list of issues together with the Case Management Orders given may mean there is no requirement for the further Case Management Hearing on 23 April 2027. The Case Management Orders make provisions for the parties to notify the Tribunal if this hearing is no longer required.

Approved by:

**First Tier Tribunal Judge
Davison sitting as an
Employment Judge**

18 June 2026

Sent to the parties on:

16 July 2026

For the Tribunal Office: