



EMPLOYMENT TRIBUNALS

Claimant: Ms Andra-Irina Naforrita

Respondent: HSBC UK Bank Plc

RECORD OF A PRELIMINARY HEARING

Heard at: Leeds

On: 11 June 2026

Before: Employment Judge R S Drake

Appearances

For the Claimant: In Person

For the Respondent: Ms M Martin (of Counsel)

JUDGMENT

1. Under Rule 38 of the Employment Tribunals Rules of Procedure 2024 ("the ET Rules") the Claimant's claim of direct race discrimination is struck out on the grounds that the claim as pleaded has no reasonable prospect of success for the reasons set out below.
2. The Claimant's application for leave to amend her ET1 to include claims of indirect race discrimination, failure to make reasonable adjustments and discrimination arising from disability are refused.
3. The Claimant's complaint of breach of contract as claimed in her ET3 is also struck out as having no reasonable prospect of success as her employment has not been terminated by either party.
4. I have expressed summary reasons orally at the hearing but am asked to set out full reasons in writing. The Claimant must understand that it is the written version

of the Reasons which prevails over what I expressed briefly in oral form if there be any differences.

Introduction

5. I refer to the parties as “C” and “R” respectively. C is and has been throughout these proceedings a litigant in person representing herself without legal/professional representation. It was clear and she admitted she had taken advice by research and also reliance on AI sources. Notwithstanding her obvious perspicacity and intellectual capability, I extended every possible judicial effort to ensure that she was not disadvantaged by being a litigant in person, noting that she said that she felt she was at a disadvantage in this respect. I sought throughout to ensure “equality of arms”. Amongst other things, I allowed her reasonable time for reflection and to collect her thoughts after hearing Ms Martin’s Submissions which I agreed should be offered first, so that C could gauge what she needed to do to make her own Submissions and to hear/see a practical demonstration of the process. Also, I took great pains to explain the relevant provisions of the ET Rules, and also key passages in the leading relevant case law reports on the subject of amendments to pleadings and strike out procedures.
6. I had an agreed jointly produced electronic hearing bundle comprising 150 pages to which I refer below accordingly as PP1 - 136. This included a two page statement from C which it was agreed I could take as read.
7. I noted the Orders made by EJ Singh on 20 November 2025 (PP24-35) which, using his paragraph numbering, defined my tasks today as follows:-

“3.1 - To consider any application to amend the Claim the Claimant is required to make” - The need for any such application had been identified by EJ Singh after detailed discussion with C about her complaints overall which would depend on how R chose to take this point in their amended ET3 and Grounds of Response which were subsequently filed on 14 January 2026; .

“3.2 – To consider any application by R for strike out (of any live claim subject to leave to amend) on the basis of no reasonable prospect of success” and indeed I noted that such an application had been lodged by R dated 8 May 2026 (P38) – R had also applied in the alternative for Deposit Orders, in respect of any claim granted leave to be added, on the grounds thy asserted they had little prospect of success;

“3.3 – (To consider and determine) the issue of disability if not conceded before then” – this became redundant in light of R conceding on 18 March 2026 that C’s stress was a disability prevailing from 8 November 2024 and also her gastrointestinal condition prevailing from 23 January 2025;
8. I recognised, and advised C, that EJ Singh had clearly noted that applications for leave to amend would be necessary to enable her to pursue the claims she was for the first time expressing at that hearing, that any such application was likely to be resisted by R, and that R would apply for strike out. He therefore set today’s

hearing to be in public and acceded to C's request that the hearing be face to face rather than by videolink by way of an adjustment of process, so as to maximise her chances of being able to make measured and forceful representations if she so chose. In this way, adjustments were made for today's hearing being in the manner I describe as a further means of reducing any sense of disadvantage or anxiety C might feel as a litigant in person.

Background and Pleadings

9. Taking into account the key guidance for cases such as this as offered by Langstaff J in the EAT decision of **Chandhok v Tirkey [2025] ICR 527**, I recognised the fundamental importance of undertaking detailed examination and analysis of C's original case pleading in her ET1 and Attached Grounds ("AG") (PP3-18 but in particular PP17 & 18); I summarise the pleading, referring to paragraphs ordinarily as C has not numbered them, as follows quoting her words where necessary:-
 - 9.1 ET1 section 8 – C ticked the boxes which simply identify her claims as "race and disability discrimination" – "breach of contract" is listed in the attached box together with heads of claim which are not recognised or are not justiciable in the Employment Tribunal i.e. – "breach of trust and confidence" (which is an allegation of fact not a head of cause of action) and "sham redundancy" which like "breach of contract"; I explained that these cannot be argued in a case where there has as yet been no termination of employment;
 - 9.2 AG First para (P17) – sets out C's history of her employment upto September 2024;
 - 9.3 AG Second para – C asserts that she was told that the nature of her work would remain unchanged throughout her employment; Yet I see that R pleads at para 9 of their amended ET3 (P21) that there existed a flexibility provision in C's Contract of Employment reserving to R the power to "change your job title ... and ... from time to time the Company may require you to carry out duties for any Group Company ... and ... you may be required to undertake such alternative or additional duties as may be commensurate with your grade ... "; This is not denied or contradicted by C;
 - 9.4 AG Third para – C pins her complaint to a first date being September 2024 when she and five colleagues, who were part of a group of nine team members, were moved across to the Mortgage Product Department to what was styled a "Centre of Excellence" team; This pleading amounts to a first complaint and I note there is no reference to her race or disability being a causative or related factor;
 - 9.5 AG Fourth para – C asserts that 6 months later, which I infer as being in March 2025, her new department manager informed her that her job title was changing and that she would "no longer be working in mortgages only" but her role would include "handling the Bank's communications for all areas" – she took exception to this as she perceived it to "represent a

significant narrowing and dilution of my role entirely removing the product and mortgage focussed responsibilities I was hired to perform”; This pleading amounts to a second complaint and I note that again there is no reference to her race or disability being a causative or related factor;

- 9.6 AG Fifth para - C asserts that in May 2025 her head of Department informed not only her but also her colleagues that “job titles were being changed to reflect our new duties”; This pleading amounts to a third complaint and I note that yet again there is no reference to her race or disability being a causative or related factor;
- 9.7 AG Sixth para (P18) – C summarises her complaints and yet again makes no reference to race being a causative element, but I do recognise she mentions stress and gastrointestinal problems; However, I note that the context of this being that the timing is significant, because she describes these conditions as the effects of her complaints not causes of them or related to them until after the events of which she complains (*my emphases*);
- 9.8 AG Seventh para – C asserts that R has “fundamentally changed my role and failed in its duty of care”; Though leaving aside the fact I note that failure of duty of care is not of itself a justiciable claim in the Employment Tribunal, I note that there is again no reference to race or disability being the basis of her of or cause for her complaints; It is for the first time that C now raises the possibility that race or disability are the causes for the changes of which she complains – she asserts “I also raise concerns about race/nationality discrimination (as the only foreign national in the team) (*my emphasis*) and disability discrimination (relating to my current health conditions and the employers failure to provide support or adjustments)”; I can infer that a direct race discrimination claim is being made here but not any other form of discrimination because of or related to the protected characteristic of disability, as she refers to current health conditions (*my emphasis again*) not what was prevailing at the times in question; Moreover, by referring to what her conditions are now not only post-dates the events complained of but also refers to effect and not cause; This fact is emphasised by what C says in her Eighth para - “the change of role has had a devastating effect on my health and wellbeing” – that is that she is expressing a state of affairs prevailing now or after, not before, the events of which she complains, and no logic takes me to any possible conclusion that this relates to the cause of what she complains;
10. As indicated, I can readily see that there exists a complaint in C’s original pleading there has been direct race discrimination. This is addressed below in relation R’s application to strike out that claim on the basis of the way that it is pleaded
11. The remaining putative heads of claim fall to be dealt with when determining the question of whether leave should be granted to enable them to be expressed fully in an amended ET1 and AG. Significantly, I note however that C has not put before me any form of draft amended pleading, but simply relied upon EJ Singh’s identification of what she might possibly wish to plead as if that were binding Judgment; It is not and cannot in law be interpreted as a judicial finding on his

part that such heads of claim have indeed been adequately pleaded or drafted sufficiently to enable leave to be granted to amend.

12. I conclude that the unamended ET1 and AG pleading, though commendably concise and clear, is legally bland, unclear as to identification of justiciable causes of action and lacks particularity both as to alleged facts and identification of the heads of claim framed under the EqA provisions. I recognise that though unrepresented legally and being a litigant in person, C may not have fully grasped that to seek amendment, a draft amended pleading needs to be put before the Tribunal, which is clear from the ET Rules; I can recognise that C is clearly aware of the ET Rules and knows how to research them, as she has researched the heads of claim with some degree of conscientiousness.

Application of relevant Rules & Authorities – Strike Out

13. I refer and have regard to Rule 38(1)(a) of the ET Rules which provides that: -

“at any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim in response on any of the following grounds - that it is scandalous or vexatious or has no reasonable prospect of success “

I recognise that paragraph (2) provides as follows: -

“a claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations either in writing or if requested by the party at a hearing”

I have given C ample opportunity to make representations.

14. For the sake of completeness, I set out below the basis upon which I had to consider the position as far as set out in Rule 38(1): -

“At any stage of the proceedings, either on its own initiative or on the application of a party, a tribunal may strike out all or part of a claim or response on any of the following grounds –

- (a) that it ... has no reasonable prospect of success - (*my emphasis*) ;
- (b)
- (c) for non-compliance with any of these Rules or with an Order of the Tribunal”;

15. I took account of the Court of Appeal's finding in **Swain v Hillman [2001] 1 All ER 91** in which it was held that a Court (or Tribunal in this case) must consider whether a party “ ... has a realistic as opposed to fanciful prospect of success ...” In this C's case before me, there is clearly on my examination no conflict of

pleading on the key points such as would necessitate ventilation of evidence necessary to make factual findings on contested allegations at a full hearing. On C's own pleading, there are only two matters of which she complains, they being charge of team and change of job title; There are no other relevant factual disputes to be determined one way or another at a full hearing.

16. **A v B (and another) [2011] ICR D9, CA** - In this case the Court of Appeal held that a Tribunal was wrong to find a claim had no reasonable prospect of success basing this conclusion on a finding that on proper analysis it had "more than a fanciful prospect" of success. From this I derive a distinction between "no prospect" and no more than a "fanciful prospect." If a point is clear cut to show that a case as pleaded is such that C simply does not set out a basis for asserting connection between her race or national background and discrimination, then C's claims MUST be doomed to fail. I conclude that this is a clear example of no prospect as opposed to no more than a fanciful prospect of success. My reason is dictated by the logical effect of C saying she was the only non-British person out of nine persons affected by the change of team, but this argument is completely groundless in the face of the fact she pleads that five other persons were moved as well as she. She now says that the process was lacking in transparency from which adverse inferences can be made but this argument simply holds no water in the face of her own admission that she was not the only person who faced team change and they were British. She apparently believes that she should compare with the team members who were not moved and they were British whereas she is not. This is the wrong comparison in law for her to seek to make. On this analysis, her direct race discrimination claim has NO reasonable prospect of success.
17. **Anyanwu (and another) v South Bank Students' Union [2001] ICR 391**. - In this case the House of Lords (Lord Hope especially) highlighted the importance of not striking out discrimination claims except in the most obvious cases as they are generally fact sensitive and usually require full examination to make a proper determination. This is still dependent on how the claim is initially pleaded. If the pleading is fundamentally flawed as I have explained above, it can't be remedied simply by the fact that it relates to alleged discrimination.
18. **Anyanwu** was followed by the Court of Appeal's decision in **Community Law Clinic Solicitors v Methuen [2012] EWCA Civ 571**, in which it was held that an employee's claim for age discrimination should not be struck out because the case required further examination of the facts so as to properly consider whether age discrimination could be inferred. C's case before me today as currently pleaded is easily distinguishable from **Methuen** because though C has pleaded race orientation as a protected characteristic, she has not pleaded connection of causality between that and the discrimination she alleges occurred.
19. In **Ezsias v North Glamorgan NHS Trust [2007] ICR 1126**, the Court of Appeal again held that it will only be in an exceptional case that a claim will be struck out as having no reasonable prospect of success when the central facts are in dispute. However, in the current case, C's claim as pleaded and as responded to does not show that central facts are in dispute - BUT - I find that, as pleaded C's claim

shows a complete absence of pleading as to causation as well as a fundamental misunderstanding of how one should deal with comparison..

20. I considered the balance of prejudice facing C if I struck out her case leaving her with no further way of arguing here her views as to what has happened (unless granted leave to amend), or to R if the case were not struck out causing them to have to devote considerable time and energy to meeting claims which on what I have seen and heard today, and also based on C's admissions implicit in her original pleading, have no prospect of success.
21. On this analysis, I conclude that the balance of prejudice favours R leading me to conclude it is right I should strike out the direct race discrimination claim.
22. I have considered as an alternative to striking out some other form of finding which would permit C to proceed with his claim. However the cruciality of the need for him to have asserted up front in initially causal connection between race and the discrimination alleged in the face of R's clear responses is so central to his case that as he has not pleaded it, his case is fatally flawed from the start. Logic dictates that his claim is therefore doomed to fail at any hearing whatever order I make today. It is in the interests of justice and fulfilling the overriding objective to achieve finality where it is possible and necessary to do so, and I conclude that it is not in C's interests to pursue a claim which is doomed to fail. For all the reasons set out above, I conclude that paragraphs (a) and (c) of Rule 38(1) is engaged and empowers me to strike out the discrimination claims in accordance therewith. Therefore, I find that I have no alternative but to dismiss

Application of and relevant Rules & Authorities - Amendment

23. In considering an application to amend, the Tribunal must have regard to the overriding objective set out in what is now Rule 3 of the **Employment Tribunals Rules of Procedure 2024 ("the Rules")** to deal with cases fairly and justly. Any such consideration should include: -
 - 23.1 Ensuring that the parties are on an equal footing.
 - 23.2 Dealing with a case in ways which are proportionate to the complexity and importance of the issues.
 - 23.3 Avoiding unnecessary formality and seeking flexibility in the proceedings.
 - 23.4 Avoiding delay, so far as compatible with proper consideration of the issues.
 - 23.5 Saving expense.

In applying these principles, I conclude that the parties are on equal footing as no suggestion has been advanced to the contrary, it would be disproportionate now and highly prejudicial to R to allow major amendments (which would stand as of today) now which come well more than three months after the events in question; Delay would ensue without saving of cost and expense in R having to undertake considerable further statement preparation and witness engagement.

24. The **Presidential Guidance on General Case Management 2018** further states (using its paragraph numbering: -

- 1 *The Employment Tribunal can allow amendments, but it will generally only do so after careful consideration and taking into account the views of the other parties. (Para 1, Guidance Note 1)*
- 2 *Generally speaking, minor amendments cause no difficulties. Sometimes the amendment is to give more detail. There may have been a typographical error, or a date may be incorrect. The Tribunal will normally grant leave to amend without further investigation in these circumstances. (Para 2, Guidance note 1)*
- 3 *More substantial amendments can cause problems. Regard must be had to all the circumstances, in particular any injustice or hardship which would result from the amendment or a refusal to make it. If necessary, leave to amend can be made conditional on the payment of costs by the claimant if the other party has been put to expense as a result of a defect in the claim form. (Para 3, Guidance note 1)*
- 4 *In deciding whether to grant an application to amend, the Tribunal must carry out a careful balancing exercise of all the relevant factors, having regard to the interests of justice and the relative hardship that will be caused to the parties by granting or refusing the amendment. (Para 4, Guidance note 1)*
- 5 *Relevant factors would include: the amendment to be made...The Tribunal must decide whether the amendment applied for is a minor matter or a substantial alteration, describing a new complaint...Time limits...the Tribunal must consider whether that complaint is out of time and, if so, whether the time limit should be extended...The timing and manner of the application...A party will need to show why the application was not made earlier and why it is being made at that time. (Para 5, Guidance note 1)*
- 12 *The Tribunal looks for a link between the facts described in the claim form and the proposed amendment. If there is no such link, the claimant will be bringing an entirely new cause of action.
-In this case, the Tribunal must consider whether the new claim is in time.
-The Tribunal will take into account the tests for extending time limits: the “just and equitable” formula in discrimination claims; (Para 12, Guidance note 1)*

I have taken all the above into account.

25. In **Chandhok v Tirkey** (referred to above), Langstaff J (President in the EAT) held:

Para 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."

NB – The current ET Rules apply since 2024 but are not materially different to those made in 2013.

Thus, I infer (inter alia) that my starting point must be C's pleading in her ET1 and that I am not allowed to expand into new heads of claim where they are not already identified and pleaded in the ET1. C has "nailed her colours to the mast" in expressing certain undetailed particulars "to the particular mast" only of possible direct race discrimination but no others, and not to any other mast or head of claim recognised by the EqA. She presented his claim form on 26 July 2025 at a time when she had legal representation, but she did have access to advice, and the fruits of her AI based research. What she now seeks to add is in my judgment new facts, not elaboration or relabeling of an existing pleading. I am persuaded by Ms. Martin's Submissions on this point.

26. In **Selkent Bus Company Ltd v Moore [1996] IRLR 661**, the EAT held that, when faced with an application to amend, a Tribunal must carry out a careful balancing exercise of all the relevant circumstances and exercise its discretion in a way that is consistent with the requirements of "(1)relevance, (2)reason, (3)justice and fairness inherent in all judicial discretions." The EAT considered that the relevant circumstances would include the nature of the amendment, the applicability of time limits and the timing and manner of the application. I have considered each of these factors and conclude that what C now seeks to add must have been known and researched well over 3 months before presentation of the ET1. I deal with the above guidance and respective prejudice arguments below.

Application of and relevant Rules & Authorities - Jurisdiction

27. With reference not only to the amendment application but also with reference to the question of whether I should exercise discretion and validate the ET1 (in relation to the new heads of claim and extend time, I am to have regard to the provisions of **Section 123(1) EqA** which provides as follows: -

"Proceedings on a complaint (under section 120) may not be brought after the end of –

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

In assessing whether it is just and equitable to extend time for a discrimination complaint, the Tribunal is entitled to consider anything that it deems to be relevant (**Hutchinson v Westward Television Ltd [1977] IRLR 69**). The Tribunal's discretion is as wide as that of the Civil Courts under section 33 of the Limitation Act 1980 (**British Coal Corporation v Keeble [1997] IRLR 336** and **DPP v Marshall [1998] IRLR 494**)

28. The case law (of which I was already aware) and to which I directed the parties included the following: -

16.1 **Dedman v British Building & Engineering Appliances Ltd [1973] IRLR 379** from which I note that the time limit for issue of proceedings “... is a jurisdictional and not a procedural issue ... “which means that if a case is out of time and time is not extendable, the Tribunal simply has no power or jurisdiction to hear the claim; I recognise that this is a very difficult concept for an unrepresented litigant in person to understand since they usually wish sincerely to air their grievances in an open forum; However, the law simply requires that they must first set out their claims with clarity and particularity in their ET1 and AG (as in this case) and set them out so that they fit within the statutory framework which defines them. This they must do first, not as they proceed and eventually as they assert in open hearing.

16.2 **Palmer & Saunders v Southend BC [1984] IRLR 119** from which I note inter alia that I am to consider the substantial cause (if shown) of the Claimant's failure to issue within any Primary Limitation Period, whether there was any impediment preventing issuing in time, whether or not the Claimant was aware of her right to issue a claim, whether the Respondent has done anything to mislead or impede the Claimant issuing her claim, whether the Claimant had access to advice, and lastly whether delay was in any way attributable to that advice. In this case the last matter of which C complains is set out in AG Fourth para which was March 2025. The ET1 was presented on 26 July 2025.

16.3 **Robertson v Bexley Community Centre [2003] IRLR 434** from which I note that application of S123(b) involves the exercise of a discretion which is an exception rather than the rule; This point is augmented by the EAT's decision in **Simms v Transco [2001] All ER 245** which is authority for the proposition that whilst the fact a fair trial is impossible will most likely preclude extension of time, it does not follow that merely because a fair trial is still possible time should be extended – each case is fact specific;

16.4 **Afolabi v Southwark BC [2003] ICR 800** from which I note that it is my duty to ensure no significant circumstance is left out of my consideration when considering whether to exercise my discretion or not and also that if I fail to take

account of prejudice to a Respondent of allowing a claim to proceed out of time, I will be in error.

As can be seen above, I have concluded that C had no impediment of the kind she supposes which prevented her from presenting her further complaints in time. If she were able to raise grievance, which she did on 10 June 2025, she has not explained satisfactorily why he could not present her further claims to Tribunal. Ss it was, she clearly was able to present a direct race discrimination claim, albeit probably out of time.

29. Under **Section 33(3) Limitation Act 1980**, Courts (and Tribunals) are required to consider factors relevant to the prejudice that each party would suffer if an extension of time to validate claims or amendments were refused, including as paraphrased by me:

29.1 The length of and reasons for the delay.

29.2 The extent to which the cogency of the evidence is likely to be affected by the delay.

29.3 The extent to which the party sued had co-operated with any requests for information.

29.4 The promptness with which the claimant acted once they knew of the possibility of taking action.

29.5 The steps taken by the claimant to obtain appropriate professional advice once they knew of the possibility of taking action.

Again, I refer to my findings above to show due consideration having been given to Section 33(3).

30. However, there is no legal obligation on the Tribunal to go through the list above, providing that no significant factor is left out (see **Afolabi [2003] IRLR 220**). The emphasis should be on whether the delay has affected the ability of the tribunal to conduct a fair hearing (**DPP v Marshall [1998] IRLR 494**).
31. The first complaint related to the events of September 2024, the second to events of March 2025 and the third to events which took place in May 2025; as pleaded, presentation of the claim as it currently stands was in July 2025 and today's hearing is the date from which any amendments are counted. In all respects, the claims are out of time, and if the original pleading were to be held to express the full extent of the new claims, even then they would be out of time today.
32. On what I have seen and heard today, I cannot conclude that the nature of the proposed amendments outweighs the issue of delay in expressing them and in any event I do not know how C seeks to express them without a clear draft amendment before me. This addresses the first of the Selkent principles.

33. Further, I again I cannot conclude that I have seen and heard an adequate explanation for why the full extent of what is now sought to be claimed has been so long delayed. This addresses the second of the Selkent principles.
34. Last, I conclude that the balance of respective prejudice favours R in this case, which addresses the third of the Selkent principles and generally.
35. The claim of direct of race discrimination having been struck out, the need for me to consider Rule 40 was obviated by my finding under Rule 38.
36. In considering the application to amend, and being without a draft of a clearly pleaded amendment so as to give rise to justiciable claims, for the reasons set out above I conclude I should not grant leave to amend and bearing in mind the absence of justiciable claim leaves the rest of the proceedings without any other claim to consider, there is nothing left for C to amend. Nevertheless, for the sake of completeness, I have addressed all the arguments she asked me to address as if there were a viable claim left to which amendments could in theory be added subject to application of the Rules and case law relating to amendment.

Employment Judge Drake

Dated: 11 June 2026