



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Judgment in Case No. 8001853/2025 issued following Open Preliminary  
Hearing Heard on the Cloud Based Video Platform at Edinburgh on 26 June  
2026**

**Employment Judge J G d’Inverno**

**K Brown**

**Claimant  
Not Appearing &  
Not Represented**

**East Renfrewshire Council**

**Respondent  
Represented by  
Ms Auld,  
Solicitor**

### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Employment Tribunal is:

(First) that the claimant’s application for leave to amend in terms of his updated table of complaints, lodged with the Tribunal and intimated to the respondent’s representative on 9 January 2026, is refused;

(Second) that the respondent’s application to strike-out the claims succeeds and that the claimant’s complaints ,as set out in his initiating application ET1 first presented on 29 July 2025 and as defined and recorded by Judge Sutherland in the table of complaints issued by her on 11 December 2025 together with her case management orders following Closed Preliminary Hearings of 30 October and 10 December 2025 as being:-

- a. A section 15 Equality Act 2002 complaint of discrimination arising from disability – “on 2 December 2022, the claimant was told that his job evaluation would not include MOULD duties by his manager, Jamie MacDonald”; and
  - b. A section 27 Equality Act 2010 complaint of victimisation – “on 17 February 2023, a decision was made by Jamie MacDonald to contract out the MOULD duties after the claimant had accused him of discrimination.”
- are hereby struck out in terms of Rule 38(1)(b) and separately in terms of Rule 38(1)(c) of the Employment Tribunal Procedure Rules 2024.

(Third) The claimant’s said claims are separately struck out for want of jurisdiction by reason of time bar.

**Date sent to Parties**

**15 July 2026**

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### **REASONS**

1. This case called for Open Preliminary Hearing on the Cloud Based Video Platform on 26 June 2026, in terms of Notice of Hearing issued to parties on 1 April 2026 for determination of the following preliminary issues:-

1. The Claimant's Opposed Application for Leave to Amend;
2. The challenge to the Tribunal's jurisdiction to consider the claimant's claims by reason of asserted time bar;
3. The Respondent's Opposed Application for a Strike Out.

### **Procedural History**

2. The initiating application ET1 was received by the Tribunal on 29 July 2025.
3. The particulars of claim were lacking in specification. The claims being given notice of were not immediately discernible on their face such as to afford the respondent fair notice of the case which it required to meet.
4. Two Closed Preliminary Hearings (Case Management Discussions) proceeded on 30 October 2025 and 10 December 2025 lasting respectively for two hours and three hours, during which the Employment Judge (Sutherland) sought to assist the claimant in addressing the lack of specification, in identifying and recording the nature of the claims disclosed in the initiating application ET1 and the issues requiring investigation and determination at hearing.
5. Following the second of the Closed Preliminary Hearings Judge Sutherland issued a Note of output and Case Management Orders and attaching a table of complaints in terms of which she defined and recorded the claims given notice of in terms of Form ET1 as being: -
  - a. A section 15 Equality Act 2010 ("EQA") complaint of discrimination arising from disability with the issue to be determined being: -

*"on 2 December 2022, the claimant was told that his job evaluation would not include MOULD duties by his Manager, Jamie MacDonald;"* and

- b. A section 27 EQA complaint of victimisation with the issue: -

*“On 17 February 2023, a decision was made by Jamie MacDonald to contract out the MOULD duties after the claimant accused him of discrimination.”*

- c. Judge Sutherland’s Note of Output and Case Management Orders of 11 December 2025, together with the table of complaints attached thereto, are referred to for their terms which, for reasons of brevity, are held incorporated by reference within this Note of Reasons.

6. Judge Sutherland records at paragraph 24 of her Note: -

“24. The claimant accepted in the hearing that there were no acts of discrimination or whistleblowing detriment arising after February 2023 (but he will seek to amend in new complaints). It is understood that the claimant seeks an extension of time on the basis that:-

- a. He was absent from work on grounds of his mental health from 15 June 2023 to 23 January 2024 and from 30 October 2024 to 23 May 2025;
- b. He was engaged in a grievance process regarding the discrimination by JM from August 2023 to January 2024;
- c. Although he was a member of the Union throughout that time he was unable to get advice until he went to ACAS.”

7. Judge Sutherland’s Case Management Orders of 11 December 2025 included: -

At paragraphs appearing under the heading “**Witnesses**” the following: -

“5. At least eight weeks prior to the final hearing each party must complete and provide their table of witnesses. [that is by 4pm on the 25 May 2026 a six-day final hearing set down to proceed in person in Glasgow commencing at 10am on 20 July 2026 in terms of notice of Hearing issued on 28 January 2026]”; and

Under the hearing “**Joint set of documents**”:-

“At 8. At least nine weeks before the final hearing the parties must send to each other a list of documents on which they intend to rely at the hearing”.; and at

At “**Statement of Agreed Facts**”

“4 The parties must use reasonable endeavours to agree a statement of agreed facts set out in chronological order which must be sent to the Tribunal at least one week before the final hearing.”

8. On 9 January 2026 the claimant made written application for Leave to Amend in terms of an “updated table of complaints”.
9. On 19 January 2026 the respondent’s representative made written application for strike out of the claimant’s claims variously and cumulatively in terms of Rule 38(1)(a), 38(1)(b), 38(1)(c) and on the separate ground that the claimant lacked Title to present and the Tribunal lacked Jurisdiction, to consider his complaints by reason of asserted time bar. In the same document the respondent, by reference to the claimant’s proposed amendment (table of complaints) set out detailed grounds of objection to the application for leave to amend.
10. On 2 February 2026 the claimant lodge written grounds of objection to the respondent’s applications for strike out.

11. In accordance with Judge Sutherland's Orders, an Open Preliminary Hearing to determine the three preliminary issues was set down to proceed on the Cloud Based Video Platform on 3 March 2026 at 10am, in terms of Notice of Hearing issued to parties on 17 February 2026.

### **First Application for a Postponement of the Open Preliminary Hearing**

12. On 24 February 2026, the claimant made application for postponement of the 3 March Open Preliminary Hearing on the grounds that he "did not feel medically fit to proceed with the Hearing at that time" advising that he had contacted his G.P. Practice and would provide medical evidence to the Tribunal supporting the same.
13. In seeking to act reasonably in the conduct of proceedings, the respondent took a neutral position in relation to the application for postponement.
14. By Order communicated to the parties on 27 February 2026 Judge Cairns, according to the claimant the benefit of the doubt and standing the neutral position adopted by the respondent, postponed the Open Preliminary Hearing of 3 March 2026 on the basis that the claimant would, as he had undertaken to do in terms of the application, send to the Tribunal a letter from his G.P. confirming when he would be fit with a view to relisting the Open Preliminary Hearing.
15. By letter dated 2 March 2026 the claimant sent to the Tribunal an "updated fit note" in terms of which the claimant was signed off from work until 6 April 2026 citing "Occupational Asthma and anxiety and low mood" and stating that his doctor had expressed the view that that should be sufficient for the Tribunal's purposes.

16. The Tribunal proposed to parties that an Open Preliminary Hearing be relisted in the listing window May/June/July and inviting parties to comment within 7 days. The claimant confirmed that he had no objection to the Open Preliminary Hearing being relisted in the months of May or June 2026. The Tribunal subsequently relisted the Hearing for 26 June 2026 issuing a relevant Notice of Hearing as set out above.
17. On 17 April 2026 the Tribunal confirmed to parties that Judge Sutherland's Orders, 4, 5 and 8 of 11 December 2025, directing steps to be taken in preparation for a Final Hearing fixed to proceed for six days starting on 20 July 2026 had not been varied or set aside, should be complied with, and, that the relisted Open Preliminary Hearing remained set down to proceed on 26 June 2026.
18. On 21 April 2026 the claimant made application for postponement of the rescheduled Open Preliminary Hearing date of 26 June 2026 on the grounds that, as at the 21 April 2026, he did not feel medically fit enough to proceed with the Hearing on 26 June. The application was opposed. By letter dated 1 May the Tribunal directed the claimant to provide medical evidence being a medical certificate and/or a letter/document from the treating General Practitioner or Hospital Doctor in relation to the claimant's application to postpone set down for today 26 June 2026 that confirmed: -
  - The nature of the condition concerned and importantly;
  - That the certifying medical practitioner considers in his or her professional opinion the claimant is unfit to attend the hearing together with
  - The basis on which that conclusion is reached and on which that opinion is expressed, explaining that the fact alone that a person may have been treated for a medical condition does not of itself mean that they cannot attend or participate in a hearing;
  - The medical certificate to be provided should also indicate when the claimant was expected to be fit to attend.

19. The Tribunal correspondence explained;
- (a) that an Employment Judge must be satisfied on the evidence presented that it is just to grant a postponement and that they may ask for additional evidence in any particular case. And,
  - (b) that the claimant should note that a medical certificate to the effect that a person does not feel fit to attend a hearing is not conclusive evidence of the fact.
  - (c) The Tribunal correspondence confirmed for the avoidance of doubt that “all hearing dates and dates for compliance with Orders currently remain as listed.”
20. By letter dated 21 May 2026, the Tribunal confirmed that the Open Preliminary Hearing set down for 26 June remained in place and referred parties to the Presidential direction which set out the requirements for medical certification in respect of such an opposed application for postponement.
21. In response the claimant submitted only a fit note and a short extract from his medical records.
22. By letter dated 11 June 2026 the Tribunal wrote to the parties in the following terms:

“This case file has been referred to Employment Judge Cairns who has directed as follows:

The claimant's further email is noted. The claimant's application to postpone the preliminary hearing listed for 26 June is refused.

The postponement application is not currently supported by proper medical evidence as previous correspondence explains. A fit note saying that the claimant is not fit to work is not evidence that he is not fit to attend the remote hearing on 26 June.

This is the claimant's claim; however, it's scope is currently unclear. Additionally, there has already been a postponement from the original date in March and at the Preliminary Hearing on 26 June is a relisted date. It is not in line with the overriding objective to postpone the Preliminary Hearing in the absence of sufficient supporting evidence."

23. On the Open Preliminary Hearing of 26 June being listed before the sitting Judge, the Judge directed, on 18 June 2026, the respondent's representative to send to the claimant with a copy to the Tribunal, in advance of the Open Preliminary Hearing a skeleton of the contentions to be advanced on behalf of the respondent at the Open Preliminary Hearing, the same to include full specification of all relevant statutory provisions and full citation of any case authorities to which the Tribunal was to be referred. A direction which was complied with by the respondent's representative.
24. By email dated 18 June 2026 the claimant wrote to the Tribunal stating that he did not feel mentally fit enough to prepare for or participate in the Hearing which correspondence was referred to the Hearing Judge on 23 June 2026 and in response to which the Judge having construed the claimant's correspondence as a further application to postpone the Hearing, directed the claimant be again advised of the requirements for medical certification including the specific matters in respect of which the certificate must cover in order to support the renewed application.

25. The claimant was advised that he should produce such certification by 4.30pm on 25 June absent which the Open Preliminary Hearing would proceed as listed and to which he should log in using the details provided in the Notice of Hearing.
26. The claimant responded by stating that no further medical certification would be forthcoming.
27. At 09.03 on the morning of 26 June 2026 there was referred to the Hearing Judge an email communication, sent by the claimant to the Tribunal on the preceding evening after the close of business, and in which he stated that he was unfit to participate and therefore wouldn't be in attendance. In response, on the Hearing Judge's direction the Tribunal advised both parties prior to the time set down for the Hearing that these being adversarial proceedings, in the event the claimant did not attend, the Judge would hear the respondent's representative at the outset of the Hearing and then decide whether to proceed in terms of Rule 47.
28. When the case called for Hearing the respondent's representative was in attendance and there was no appearance by or on behalf of the claimant. The Judge delayed until 10.15am the start of proceedings.
29. In terms of her opening submission the respondent's representative invited the Tribunal to dismiss the claims in terms of Rule 47. Upon consideration that the claimant had previously lodged full written grounds of opposition to the respondent's applications for strike out and, having received many months' notice of the respondent's grounds of opposition to his application for leave to amend, the Tribunal declined to dismiss the claim without hearing determining, in the alternative, to proceed with the Hearing in the absence of the claimant while taking account of the information available to it in terms of the claimant's written terms of proposed amendment as set out in his updated table of complaints, and of his written grounds of objection to the respondent's application for strike out.

30. The Hearing accordingly proceeded in the claimant's absence in terms of Rule 47.
31. The claimant's "updated table of complaints" lodged with the Tribunal and intimated to the respondent on 9 January 2026, in terms of which he seeks leave to amend, is referred to for its terms which, for reasons of brevity, are held incorporated by reference within this Note of Reasons.
32. The respondent's grounds of objection to the opposed application for leave to amend and written application for strike out of the claims variously and cumulatively in terms of Rule 38(1)(a), (b) and (c) and separately for want of jurisdiction by reason of asserted time bar both dated, lodged and intimated on 29 January 2026, are referred to for their whole terms which, for reasons of brevity, are held incorporated by reference within this Note of Reasons.
33. The respondent's representative addressed the Tribunal orally in terms of the skeleton argument sent to the claimant prior to the Hearing in compliance with the Tribunal's direction. (standing the claimant's absencing himself from today's Hearing the Tribunal exceptionally sets out below the terms of that argument, viz: -

"Skeleton of Contentions for Preliminary Hearing on 26th June 2026

1. Application for an order striking out the claim in line with Rule 38 of The Employment Tribunal Procedure Rules 2024:

The Respondent applies for an order striking out the claim under rule 38 on the ground that the claim has no reasonable prospect of success in accordance with Rule 38(1)(a).

The two acts relied on by the Claimant, in the claim as currently drafted, are reflected in the draft table issued by Employment Judge Sutherland alongside the Case Management Order of 11th December 2025.

### Discrimination Arising from Disability

- On 2 December 2022, the Claimant was told that his job evaluation would not include Mould duties by his manager, Jamie MacDonald; and

### Victimisation

- On 17 February 2023, a decision was made by Jamie MacDonald to contract out the Mould duties after the Claimant accused him of discrimination.

For a claim of Discrimination arising from disability to be successful, the Claimant must establish, in line with s.15 of the Equality Act 2010 that he was (a) treated unfavorably because of something arising in consequence of his disability and (b) the treatment was not a proportionate means of achieving a legitimate aim.

For a claim of Victimisation to be successful, the Claimant must establish, in line with s.27 of the Equality Act 2010, that he suffered detriment as a result of a protected Act.

The Claimant asserts that the decision to contract out the mould duties was taken because he had complained of discrimination, and that this was done to disadvantage him in the job evaluation process. This is misconceived. Whilst the painters had previously undertaken mould duties, no painters, including the claimant were carrying out such duties at the time of the December 2022 job evaluation. The job evaluation was based on the actual duties performed by the role of painter and was applied uniformly to all in the role. There is no causal link between the Claimant's asthma and the treatment complained of, nor any basis on which it could be said that he was subjected to

unfavorable treatment 'because of' something arising due to his disability.

Taking the claim at its highest, the Claimant has not established that he was subject to discrimination arising from disability or victimisation. All painters were treated the same in the job evaluation process, and no painters were carrying out mould duties at that point.

The Claimant's dissatisfaction with the outcome of the job evaluation process does not mean that the Respondent has conducted themselves unlawfully. The claim has no prospects of success.

The Respondent applies for an order striking out the claim on the grounds that the manner in which the proceedings have been conducted by the claimant has been unreasonable in accordance with Rule 38(1)(b).

Two preliminary hearings have already taken place, lasting two and three hours respectively. The Claim is a detailed narrative, but it is difficult to identify the legal complaints relied upon by the Claimant. The Claimant now seeks to reintroduce issues he previously accepted did not amount to discrimination or whistleblowing detriment.

This conduct undermines the purposes of case management, causes unnecessary delay and expense and amounts to unreasonable conduct justifying strike out. The Claimant's conduct has caused unnecessary further case management and had eroded procedural certainty in this case.

In addition, the Claimant has been unreasonable in his persistent failure to provide a list of witnesses. While the claimant has stated that he intends to call eight witnesses, the Respondent has no knowledge of who these individuals are. The Claimant's failure has deprived the Respondent of the opportunity to consider the relevance and admissibility of the proposed evidence, to raise any objection at an early stage and to prepare its case in a focused and proportionate manner.

The Claimant's repeated disregard of procedural requirements and Tribunal reminders has caused unnecessary prejudice to the Respondent and further demonstrates a pattern of unreasonable conduct in the Claimant not specifying his case.

The Respondent applies for an order striking out the claim on the grounds that the Claimant has not complied with the Tribunal's case management orders of 11<sup>th</sup> December 2025 in line with Rule 38(1)(c).

The Claimant has not complied with the case management order to provide a list of documents. The Respondent has therefore been unable to identify which documents we require the Claimant to provide. The Respondent has been unable to begin preparation of the Joint Set of Documents as the Claimant has not engaged in the process.

As previously stated, the Claimant has not provided a list of witnesses. The Claimant has therefore not complied with the case management order to provide a Table of Witnesses eight weeks prior to the final hearing.

The Claimant's noncompliance with orders has significantly prejudiced the Respondent.

The Respondent has been unable to appropriately prepare for the final hearing given the full scope of the claim remains unknown.

2. Application to dismiss the claim due to non-compliance with time-bar:

The Respondent applies for the claim to be dismissed on the basis that it was presented outside the relevant time period, and no grounds exist for extending that time period.

In accordance with s.123 (1) of the Equality Act 2010, a complaint of discrimination and victimisation must be made within three months of the act or such other period as the tribunal thinks just and equitable.

In accordance with s.48(3) of the Employment Rights Act 1996, a complaint of whistleblowing detriment must be made within three months or if not reasonably practicable, such further reasonable period.

The alleged acts giving rise to the claim as it is currently drafted in the ET1 occurred on 2 December 2022 and 17 February 2023. It is recorded in the Preliminary Hearing Note of 11th December 2025 that the Claimant accepted that there were no acts of discrimination or whistleblowing detriment after February 2023. The Claimant lodged the ET1 in June 2025, which is approximately two years outside the limitation period.

The Claimant seeks an extension of time on the basis that he was off work for an extended period and was unable to obtain advice from his Union. The Claimant was absent from work between 15 June 2023 until 23 January 2024 (7.5 months) and again between 30 October 2024 and 23 May 2025 (7 months.) Prior to his absence, the Claimant had ample time between February and June 2023 to raise his claim. In addition, he returned to work for nine months between January and October 2024. The Claimant had access to advice and representation throughout this period. The

Claimant acknowledges in his claim form that he understands there are strict timescales on discrimination claims.

The Respondent submits it is not just and equitable to extend the time frame in respect of the Discrimination Arising from Disability and victimisation claims. *Robertson v Bexley Community Centre* [2003] EWCA Civ 576.

The Respondent submits that it was reasonably practicable for the Claimant to bring any complaint of whistleblowing detriment within three months and the time limit for doing so should therefore not be extended.

### 3. Opposition to the Claimant's Table of Amendments

The Respondent opposes the Claimant's proposed amendments. When considering whether to allow an amendment the Tribunal should consider the nature of the amendment, the timing and limitation implications, and the prejudice to each party. The key test is to balance the injustice and/or hardship of allowing or refusing the amendment. *Selkent Bus Co Ltd v Moore* [1996] ICR 836 EAT.

The proposed amendments seek to significantly expand, re-frame and re-introduce matters which were either expressly recognised by the Claimant as not amounting to discrimination or detriment, were known the Claimant at the time he presented the ET1 and are now significantly out of time. The Claimant also seeks to add in new claims, namely in respect of Reasonable Adjustments.

The scope of the claim has been unclear throughout proceedings and to allow further claims to be amended in now would be to permit rolling litigation through the incremental addition of issues, the majority of which occurred prior to presentation of the ET1 and should have been included within.

Allowing the amendment would cause significant injustice and hardship to the Respondent. It would expand the scope of the proceedings beyond what the Respondent has prepared for and would require investigation of new factual matters, potentially involving additional witnesses and documents.

The Claimant has offered no reasonable explanation why these proposed amendments were not included in the original claim given the majority of matters had occurred prior to the submission of the ET1. The Respondent is prejudiced by the

passage of time. Many of the Claimant's proposed amendments refer to the involvement of his previous manager, Jamie MacDonald, who is no longer an employee of the Respondent."

34. For the same reasons the Tribunal exceptionally sets out below the whole terms of the claimant's written objections to the respondent's application for strike out and response to the respondent's grounds of objection to his application for leave to amend [dated 6 February 2026], which the Tribunal fully considered as information which was available to it in terms of Rule 47 viz:-

"1. Introduction

1. The Claimant is a litigant in person and opposes:

- the Respondent's application to strike out the claim under Rule 38;
- the application to dismiss the claim on grounds of time bar; and
- the opposition to the Claimant's proposed amendments.

2. The Claimant has acted in good faith throughout proceedings and has sought to comply with Tribunal directions while attempting to resolve matters internally wherever possible.

3. The Respondent's applications seek to determine disputed factual and legal issues summarily. The Claimant submits that this is inappropriate and that the claim has reasonable prospects of success.

2. Strike-out under Rule 38 is inappropriate

4. Strike-out is a draconian measure and should only be exercised where a claim has no reasonable prospect of success or where conduct is truly abusive. That threshold is not met in this case.

5. The Respondent's application is largely based on disagreement with the Claimant's factual case and legal characterisation of events. These are matters for determination at a substantive hearing, not at a preliminary stage.

6. The fact that the Claimant's original ET1 was narrative in form reflects his status as a litigant in person and the complexity of the matters raised. Narrative pleading does not equate to a lack of reasonable prospects.

7. The Tribunal itself identified the need for clarification and invited the Claimant to provide a table of complaints. That process cannot now be relied upon as evidence that the claim is hopeless.

4. Allegations of unreasonable conduct are denied

8. The Claimant strongly disputes the allegation that he has conducted proceedings unreasonably.

9. Throughout the relevant period, the Claimant repeatedly sought to resolve matters internally, including raising grievances and whistleblowing concerns, often with union involvement, in an attempt to avoid or narrow tribunal proceedings.

10. The Claimant raised further grievances prior to and following preliminary hearings, including through his union full-time official, specifically to seek resolution of ongoing treatment and new evidence.

11. On multiple occasions, the Respondent's HR and management advised the Claimant that the matters raised would be better dealt with by the Tribunal rather than being investigated internally.

12. In those circumstances, it is not unreasonable for the Claimant to have continued to pursue matters through the Tribunal process, particularly as a litigant in person with a disability.

13. Any complexity or expansion of issues has arisen from the Respondent's refusal to investigate or resolve matters internally, rather than from any tactical or abusive conduct by the Claimant.

4. Witness list clarification

14. At the second preliminary hearing, the Claimant specifically asked the Employment Judge whether he should provide the names and relevance of witnesses at that stage. The Judge advised that this was not required and that directions would be issued in due course.

15. Subsequent written correspondence from the Tribunal stated that witness lists should be exchanged no later than three months before the final hearing. At that time, no fixed hearing date had been set.

16. The final hearing dates were only confirmed recently. The Claimant intends to provide his witness list in accordance with the Tribunal's directions and within the applicable timeframe.

17. The Claimant denies that his conduct in this respect has been unreasonable and confirms his intention to comply fully with all case management directions.

#### 5. Time bar and continuing acts

18. The Claimant does not contend that every historic event constitutes a standalone claim within time.

19. Rather, the Claimant relies on earlier matters as relevant background and context to alleged continuing acts of discrimination, victimisation, and failure to make reasonable adjustments, some of which occurred within the limitation period.

20. The Respondent's submissions seek to artificially isolate individual events and ignore the Claimant's case that there was a continuing state of affairs, including ongoing failures to address discrimination concerns and alleged retaliatory treatment following protected acts.

21. The Claimant also relies on alleged failures to make reasonable adjustments and health surveillance that occurred within the limitation period.

22. By way of example, the Claimant requested a follow-up lung function test due to concerns regarding his occupational asthma. This request was initially refused, despite the Respondent's knowledge of the Claimant's diagnosis and despite other employees being provided with such testing upon request.

23. Following union involvement and a period of sickness absence caused by stress and health concerns, the Claimant was subsequently referred for lung function testing. The results indicated a deterioration when compared with previous testing.

24. The Claimant relies on this matter at this stage solely to demonstrate that there are arguable acts within the limitation period forming part of an ongoing duty to make reasonable adjustments and protect his health.

25. Whether the matters relied upon constitute continuing acts, or whether it is just and equitable to extend time, are matters that require consideration of the full factual matrix and are not suitable for summary determination.

#### 6. Amendments

26. The proposed amendments do not seek to invent a new factual narrative. They seek to clarify and properly categorise factual matters already described, following judicial explanation of the relevant statutory tests.

27. The Claimant's difficulty in articulating the legal distinctions between discrimination, victimisation, and whistleblowing detriment at an early stage arose from his status as a litigant in person and his health conditions, not from any attempt to mislead or expand proceedings unreasonably.

28. The Claimant accepts that the Tribunal may determine that certain matters should not proceed as standalone claims or are out of time. However, that is a matter for case management and merits determination, not for strike-out.

#### 7. Clarification regarding mould and damp duties

29. The Claimant wishes to clarify a factual matter relied upon by the Respondent concerning whether mould and damp duties were being undertaken by painters at the time of the job evaluation process.

30. At the preliminary hearing, the Claimant answered questions on the basis of what management stated at the point the formal job evaluation questionnaire was completed, namely that mould and damp duties had been removed from the painter role due to alleged health and safety advice.

31. The Claimant does not accept, and has never accepted, that mould and damp duties were not being undertaken by painters at the start of the job evaluation process or prior to the Claimant raising concerns of disability discrimination.

32. The Claimant's position is that:

- mould and damp duties had been routinely undertaken by painters for many years.
- those duties were still being undertaken by painters at the point the Claimant initially challenged his job evaluation and raised concerns about discriminatory exclusion.
- the removal of mould and damp duties occurred only after the Claimant raised concerns of discrimination; and
- the justification given for the removal, namely new health and safety advice, has since been shown to be incorrect.

33. Any suggestion that the Claimant agreed that mould and damp duties had already ceased prior to his protected act arises from a misunderstanding of the timing of events, rather than any concession as to the substance of his claim.

34. This clarification is provided to assist the Tribunal in understanding the sequence of events and does not seek to re-open matters already determined.

## 8. Conclusion

35. The Claimant submits that:

- the claim has reasonable prospects of success
- strike-out is inappropriate
- dismissal on time-bar grounds would be premature; and
- the proposed amendments are reasonable and proportionate.

36. The Claimant remains willing to cooperate with case management and accepts that the Tribunal may limit the scope of matters proceeding but respectfully submits that the claim should be allowed to proceed.”

35. The respondent’s representative also made additional oral submissions by way of exercising a right of reply to the claimant’s written grounds of objection:-

a. In relation to the application for strike out; viz:-

In relation to paragraph 5 of the claimant's written objections which is in the following terms –

*“5. The respondent's application is largely based on disagreement with the claimant's factual case and legal characterisation of events. These are matters for determination at a substantive hearing, not at a preliminary stage.”*

By way of reply the respondent's representative submitted that as was clear from the submissions already made that was a misdescription of the respondent's application and given the nature of the grounds upon which the strike out was sought, it was both appropriate and proportionate that the application for strike out be determined on a preliminary basis with a view to avoiding the unnecessary expense associated with the upcoming final hearing.

b. In relation to paragraph 6 of the claimant's written objections which is in the following terms:-

*“6. The fact that the claimant's original ET1 was narrative in form reflects his status as a litigant in person and the complexity of the matters raised. Narrative pleading does not equate to a lack of reasonable prospects.”*

By way of reply the respondent's representative submitted that at no point had the respondent suggested that the claimant's claims enjoyed no reasonable prospect of success by reason alone of the fact that they were presented in narrative form. On the contrary, the respondent in terms of it's written application and it's submissions made, had detailed regard to the claimant's updated table of complaints and, notwithstanding the same, continues to submit that the claims (the complaints) enjoy no reasonable prospect of success.

c. In relation to paragraph 9 at section 4 of the claimant's written objections which is in the following terms:-

*“9. Throughout the relevant period, the claimant repeatedly sought to resolve matters internally, including raising grievances and whistleblowing concerns, often with Union involvement, in an attempt to avoid or narrow Tribunal proceedings.”*

By way of reply the respondent's representative submitted that at no point in proceedings has the respondent contended that the claimant had failed to engage with internal processes. Rather, it was the claimant's conduct in the context of these Tribunal proceedings that the respondent deems to have amounted to unreasonable conduct of proceedings for the purposes of Rule 38(1)(b)).

- d. Regarding paragraph 17 at section 4 of the claimant's written objections regarding non-compliance with the Tribunal's Orders, and which is in the following terms:-

*“17. The claimant denies that his conduct in this respect has been unreasonable and confirms his intention to comply fully with all case management directions.”*

By way of reply the respondent's representative submitted that whereas on 2 February 2026 the claimant had not complied with the Tribunal's directions to submit a list of witnesses and a list of documents but had confirmed at paragraph 17 his intention “to comply fully with all case management directions”, in the intervening four month period the claimant had not so complied and continued to be in breach of the Tribunal's Orders to lodge and intimate a witness list and to lodge and intimate a documents list, notwithstanding the proximity of the Final Hearing which was due to commence in three week's time.

## **Discussion and Disposal**

36. The claims before the Tribunal at Hearing to which the respondent's application for strike out is directed, are those confirmed and recorded by Judge Sutherland in her case management Orders, note of output and associated table of complaints issued to parties on 11 December 2022 following Closed Preliminary Hearing Case Management Discussion of 30 October and 10 December 2025. Those claims are:-

**a. Discrimination arising from disability**

- On 2 December 2022, the claimant was told that his job evaluation would not include MOULD duties by his manager, Jamie MacDonald;

**b. Victimisation**

- On 17 February 2023, the decision was made by Jamie MacDonald to contract out of the MOULD duties after the claimant accused him of discrimination.

**The claimant's application for leave to amend.**

37. There is also before the Tribunal for determination, in terms of the Notice of Hearing, the claimant's opposed application for leave to amend. The Tribunal turns to consider and dispose of that application first standing the potential of its determination to inform consideration of the applications for strike out.

**The terms of the proposed amendment**

- a. The terms and effect of the proposed amendment are to be found in the claimant's updated table of complaints lodged by him following the Case Management Hearings of October and December

2025 and the issue, by Judge Sutherland, of her Note and the accompanying table of complaints.

b. The proposed amendment seeks to significantly expand and reframe the claim as given notice of in the ET1, while at the same time seeking to reintroduce matters which were recognised by the claimant in the course of Case Management as not amounting to acts of discrimination and as not amounting to detriment.

c. They are matters which were known to the claimant at the time he presented his initiating application ET1 and are significantly out of time in terms of section 123(1)(a) of the EQA.

38. In terms of the proposed amendment the claimant also seeks to add of what he recognises are entirely new claims being a different species of discrimination in terms of section 21(2) and section 20 of the EQA (alleged breach of duty to make adjustment).

39. At paragraphs 24 and 29 of his updated table of claims the claimant seeks to amend his claim to introduce that new cause of action based on alleged events said to have occurred after the presentation of the initiating application ET1. The amendment does not amount to an expansion of the existing pleaded claim, but rather it is a new claim based on subsequent alleged conduct, involving different factual matters. It's allowance would be to permit what would, in effect, be rolling litigation through the incremental additions of later allegations. In circumstances where the claimant wishes to pursue alleged unlawful acts occurring after the presentation of the ET1 including where they involve a species of discrimination not previously pled, and as the instant case are not connected to the issues already raised of which related

to “MOULD duties” and/or exposure to mould, there is open to the claimant the appropriate course of presenting any new initiating application ET1.

40. Separately, the effect of allowing amendment in the terms sought would have the effect of introducing new complaints all of which enjoyed no reasonable prospect of success.

(a) The amendment which in its terms bears to introduce an allegation of discriminatory conduct which occurred on 26 February 2018 relates to an alleged non-accessing by the claimant of a lung function test.

(b) Notwithstanding the fact that the role of painter (the claimant's role) was not assessed as one requiring a lung function test due to the risk of exposure to silica and lead dust, it being only the roles of joiner, plasterer and certain labourers which in fact required the test, it is accepted by the claimant that the respondent in fact allowed such testing for the claimant which the claimant undertook on 13 and 19 January 2026 and the potentially alleged unfavourable treatment having not in fact occurred.

41. The amendment does not identify and, on the factual basis accepted it appears it would not be possible to identify, relevant unfavourable treatment or detriment nor, in relation to time bar, to establish any continuing issue. In short there would appear to be no factual foundation on which to direct such a proposed claim.

42. At paragraphs 25, 26, 27, and 28 of his updated table of claims, the claimant seeks to introduce by amendment complaints of a new species of discrimination not previously pled all being matters which were known to the claimant at the time his ET1 was first presented and could and should have been pleaded then. All bear to relate to matters which were within the claimant's knowledge well in advance of the date of first presentation of his ET1 separately at the Preliminary Hearing of 10 December, at which, as is

noted by Judge Sutherland the claimant expressly agreed that the only two issues in his claim form related to one instance of victimisation and one instance of discrimination arising from disability. At paragraph 24 of her Note Judge Sutherland records that the claimant accepted at the Hearing that there were no acts of discrimination or of whistleblowing detriment arising after February 2023. The potential introduction of a complaint of breach of duty to make adjustments would introduce new legal tests and statutory issues. It would materially alter the character and nature of the claim and mitigate against the efficient and proportionate conduct of the proceedings and their progression towards the Final Hearing.

43. All of the proposed elements of the amendment are substantially out of time.
44. At Paragraph 37 of his updated table of complaints the claimant bears to introduce by way of amendment two entirely new complaints of having suffered detriment in terms of section 47B of the Employment Rights Act 1996 in consequence of his having made protected disclosures. These are new claims said to rest upon a new statutory basis and upon new facts not previously pled. They are matters which on their face were known to the claimant at the time he presented his initiating application ET1 and should have properly been included within it.
45. The incident said to have occurred on 4 September 2024 is substantially out of time, the ET1 having been lodged in June 2025.
46. The incident said to have occurred on 2 December 2025 is the same incident of alleged non-access to a lung capacity test which is the subject of the proposed amendment at paragraph 24 of the claimant's updated list. It is a matter arising significantly after the presentation of the initiating application ET1 and is unfounded in fact, it being accepted by the claimant that the respondents in fact allowed such testing on the part of the claimant.

47. When considering and determining applications for leave to amend the Tribunal considers the: -
- (a) The nature of the amendment,
  - (b) The timing and limitation implications and
  - (c) The prejudice to each party which is likely to arise in the event that the application is allowed and in the event that the application is refused.
48. The Tribunal must carry out an exercise of balancing the relative injustice and hardship of allowing and refusing the amendment – ***Selkent Bus Company Ltd v. Moore*** [1996] ICR 836 EAT. The allowance of an amendment in the terms sought would materially alter the character and nature of the claim and would expand the scope of proceedings beyond what was given notice of in the initiating application ET1. It would require investigation of new factual matters potentially involving additional witnesses and documents. It would also disrupt the Case Management Timetable in a case which is due to proceed to a six-day Final Hearing in some three weeks' time.
49. Following investigation, the respondent would require an opportunity to answer the amendment and there would be insufficient time for the pleadings to be re-finalised, joint bundle of documents to be prepared and parties to prepare for the Final Hearing on the amended grounds. The inevitable consequence would be the loss of the Final Hearing dates.
50. The amendments fall either into the category of being significantly out of time, or relating to new species of discrimination/statutory complaints based on new factual allegations about matters said to have occurred after the raising of the instant proceedings and should properly be made the subject of a separate claim. Their inclusion and the current litigation would constitute the allowance of "rolling litigation" defeating or substantially frustrating the Case

Management process. It would result in significant delay in bringing the expanded case to a Final Hearing.

51. In relation to the issue of time bar the claimant has advanced no basis upon which it would be just and equitable to extend time for such a significant period. The claimant has offered no explanation as to why these matters were not included in the ET1 nor why a decision to seek to include them was taken only after the Case Management Hearings of December 2025.
52. A number of the individuals who would require providing evidence in relation to the matters which are now being sought to be introduced by amendment are no longer within the employment of the respondent which would impair the respondent's ability to investigate and respond to the allegation.
53. The new claim, in so far as relating to access to lung function testing, appears on the claimant's own averments to be misconceived, such testing having in fact been made available to him notwithstanding the fact that, as a painter, he was not considered for Health and Safety Executive purposes as being within the group of workers at risk.
54. The scope of the claims presented in the ET1 were unclear from the date of its first presentation, coming to be clarified and defined, and recorded only in December of 2025 by Judge Sutherland in her Note of output and draft table issued to parties for their comment/proposed adjustment. Judge Sutherland allowed a particular specific period of time for parties to undertake that exercise, proceeding on the basis that if they did not do so the matters ordered by her would be held to be reflective and definitive of the issues and claims before the Tribunal.
55. That clarity having been brought to the claim through the process of proactive judicial case management, allowance of the amendment in the terms sought would serve to remove that clarity requiring duplicating and reiterated case

management, that, in turn would involve both parties in further delay and the incurrence of expense, and the Tribunal in the outlay of further resource.

56. Were leave to amend be granted in the terms sought the respondent would suffer significant prejudice: -

a. The respondent would no longer have fair notice of the case which it required to meet.

b. The respondent would require to undertake further resource costly investigations in order to answer the amendment and seek clarification of what, in many respects would remain an insufficiently specified set of additional/expanded claims.

c. In the loss of the July listed Final Hearing dates with associated wasted costs and inconvenience to witnesses.

d. On the other hand, if the amendment is refused there will still be open to the claimant the option of seeking to raise the new matters by way of a separate claim albeit subject to the same challenge of time bar.

e. By reason of refusal of the application to amend, the claimant would not be deprived of his existing claims albeit, the same are, and would remain, the subject to the respondent's applications for strike out.

f. Upon a consideration of the circumstances pertaining including the "**Selkent** factors", the Tribunal determines that the balance of injustice and hardship lies in favour of refusing the claimant's application for leave to amend, which it does.

**Strike Out**

57. The respondent contends that for strike out of both of the “Section 15 of the Equality Act 2010” and “Section 27 of the Equality Act 2010” (“EQA”) claims, variously and cumulatively, in terms of Rules 38(1)(a) (no reasonable prospect of success), 38(1)(b) (unreasonable conduct of proceedings), and, 38(1)(c) (non-compliance with Orders of the Tribunal) and, separately in relation to each, for want of jurisdiction (by reason of asserted time bar).

58. The action of striking out by the Tribunal involves a two-stage process: viz,  
“Firstly, by reference to the terms of the particular rule relied upon the Tribunal must be satisfied that it’s discretion to strike out has been awakened;

Secondly, the Tribunal must be satisfied in the particular circumstances and in the judicial exercise of its discretion and that it is appropriate to strike out the claim which second stage involves consideration of proportionality, balance of prejudice and the extent to which there remains to be resolved at the heart of the claim a core of disputed facts best determined at or after an evidential Hearing.”

**Rule 38(1)(a) – No Reasonable Prospect of Success**

59. For the section 15 EQA claim to succeed the claimant must prove at a Hearing and, for today’s purposes must sufficiently specifically offer to prove (a) that he was treated unfavourably because of something arising in consequence of his disability and (b) that the treatment was not a proportionate means of achieving a legitimate aim.

60. For the claim of victimisation to be successful, the claimant must establish, in line with the provisions of section 27 of the 2010 Act, that he suffered a detriment as a result of his doing a protected act again, as defined by the provisions of section 27.
61. Taking the section 15 claim at its highest, the relevant acts which are accepted but also relied upon by the claimant are incompatible with the relevant statutory test: - Viz

“The claimant accepts all painters were treated the same in the job evaluation process and that no painters were carrying out MOULD duties as at December 2022 when the evaluation exercise took place.”

62. The job evaluation was based on the actual duties performed by the role of painter and was applied uniformly to all in the role. At the time of the job evaluation exercise, MOULD duties had long since been contracted out by the respondent. The claimant does not offer and is unable on the facts accepted, to offer to prove a causal link between his Asthma and the treatment complained of, nor any basis on which it could be said that he was subjected to unfavourable treatment ‘because of something arising due to his disability.’ The contracting out of duties had no differential impact on the claimant. On the face of the claimant’s pleaded case, it was not a detriment arising from any protected act.
63. Taking the claimant’s claim at its highest the claimant will be unable to establish that he was subject to discrimination arising from disability or to an act of victimisation. All painters were treated the same in the job evaluation process, and no painters were carrying out MOULD duties at that time.
64. While it is evident that the claimant was dissatisfied with the outcome of the job evaluation process that does not, and cannot of itself, establish that the

respondent had conducted themselves in a discriminatory manner or otherwise unlawfully.

65. On its consideration of the claimant's pleaded case and of parties' submissions, including the claimant's detailed written grounds of objection to the respondent's applications, the Tribunal concludes that the claimant's complaints of section 15 discrimination arising from disability and of section 27 EQA victimisation each enjoy no reasonable prospects of success and, accordingly, that its discretion to strike out the claims in terms of Rule 38(1)(a) is awakened.

**Rule 38(1)(b) (acting unreasonably in the conduct of proceedings)**

66. The case is one in which two Preliminary Case Management Hearings have already taken place and today's Open Preliminary Hearing which was originally set down to proceed in March 2026 was discharged on the application of the claimant on the asserted grounds of ill health. In respect of that, the respondents having adopted a neutral position in respect of the application, the claimant was accorded the benefit of the doubt by the Tribunal and his application granted notwithstanding his failure to provide, either in advance of the application or subsequent to its being granted relevant medical vouching of the type directed.
67. Following Judge Sutherland Case Management Orders and Note of output of 11 December 2025, the case was again set down for Final Hearing with currently listed dates of 20 to 27 July 2026.
68. In her Orders of 11 December 2025, Judge Sutherland issued directions to parties designed to facilitate the proper preparation of the case for Final Hearing and the conduct of a Fair Hearing on the dates set down.
69. At paragraph 5 of her Orders issued to parties on 11 December 2025, Judge Sutherland ordered that "*at least eight weeks' prior to the Final Hearing each*

*party must complete and provide their table of witnesses”; and at paragraph 8 of her Orders, relating to the production of a “joint set of documents”, that “at least nine weeks before the Final Hearing the parties must send to each other a list of documents on which they intend to rely at the Hearing.*

70. The claimant has delayed and declined to comply with either of those Orders, the periods for compliance having expired respectively on the 25 and on 18 May 2026.
71. At paragraph 4 of the Orders, Judge Sutherland directed “*the parties must use reasonable endeavours to agree a statement of agreed facts set out in chronological order which must be sent to the Tribunal at least one week before the Final Hearing.*” Although the period for compliance with Order 4 will not end until 13 July, the claimant has declined to engage with the process directed at Order 4 with the result that it is highly unlikely that Judge Sutherland’s Order will be complied with.
72. Parties’ compliance with Orders 5 and 8 of 11 December 2025 directly inform parties’ abilities to prepare for the Final Hearing and directly impact upon the extent to which it will be possible for a Fair Hearing in the case to be held on the dates set down.
73. Although at paragraph 17 of his written grounds of objection the respondent’s application for strike out, lodged and intimated by him on 2 February 2026, that is almost six months ago, the claimant, whilst denying that his conduct as at that date amounted to unreasonable conduct of proceedings, positively asserted that he intended “**to comply fully with all case management directions**”. Notwithstanding that assertion, in the intervening five/six-month period the claimant has taken no steps to so comply with Judge Sutherland’s Orders, has failed to so comply, and as at the date of Hearing, 26 June 2026, continues in that non-compliance.

74. The Tribunal concludes that conducting proceedings such as to fail to comply with the Tribunal's Orders and such as to continue in non-compliance and : -

- (a) in undermining parties' abilities to properly prepare for the Final Hearing dates set down,
- (b) in rendering it unlikely that a fair hearing of the claims can be conducted on the July dates and,
- (c) by jeopardising the July Hearing dates,

the claimant has acted unreasonably in the conduct of proceedings and that the Tribunal's jurisdiction to strike out the claim in terms of Rule 38(1)(b) is awakened.

**Rule 38(1)(c) (Non-compliance with Orders of the Tribunal)**

75. The claimant has not complied with the Tribunal's Case Management Order 5 of 11 December 2025 (provision of table of witnesses). The claimant has not complied with the Tribunal's Order 8 of 11 December 2025 (intimation of list of documents in which he intends to rely at the Hearing).

76. As at the date of Open Preliminary Hearing, 26 June, the claimant persists in that non-compliance and has taken no action to, and has given no indication of an intention to purge that non-compliance.

77. The Tribunal considers that it's discretion to strike out the claimant's claims in terms of Rule 38(1)(c) is awakened.

**Whether the Tribunal should exercise it's awakened discretion to strike out the claims in terms of Rule 38(1)(a)**

78. In *Mechkarov v. City Bank NA* UKEAT/0041/16/DM the Employment Appeal Tribunal, under reference to the House of Lords' decision in *Anyanwu & Others v. Southbank Students' Union & Others* [2001] IRLR, *Ezsias v. North Glamorgan NHS Trust* [2007] ICR 1126 and *Tayside Public Transport Company Limited (t/a/traveldonlee) v. Riley* [2012] Scot CSIH46, per Lord Justice Clark, helpfully summarised the approach recommended to Tribunals in relation to determining applications for strike out on the grounds that the claim enjoyed "no reasonable prospect of success":-

at para. 14: -

*"On the basis of those authorities, the approach that should be taken in a strike out application in a discrimination case is as follows: (1) only in the clearest case should a discrimination claim be struck out; (2) where there are core of issues of fact that turn to any extent on oral evidence, they should not be decided without hearing oral evidence; (3) the claimant's case must ordinarily be taken at it's highest; (4) If the claimant's case is 'conclusively disproved by or is 'totally and inexplicably inconsistent' with undisputed contemporaneous documents, it may be struck out; and (5) A Tribunal should not conduct an impromptu mini trial of oral evidence to resolve 'disputed facts'."*

79. In the Court of Appeal in *Ahir v. British Airways Pic* [2017] EWCA Civ 1392 further guidance was provided per Underhill LJ at para. 16: -

*"Employment Tribunals should not be deterred from striking out claims including discrimination claims, which involve a dispute of fact if they are satisfied that there is indeed no reasonable prospect of the facts necessary to liability being established, and also provided that they are*

*keenly aware of the danger of reaching such a conclusion in circumstances where the full evidence has not been heard and explored, perhaps particularly in discrimination context. Whether the necessary test is met in a particular case depends on an exercise of judgment."*

80. While the Tribunal considered that there was substance in the submission made by the respondent's representative in support of strike out in terms of Rule 38(1)(a) and while the Tribunal was satisfied that it's discretion to so strike out was awakened, on balance, it declined to strike out the claims, on that particular ground, in the absence of the claimant.

**Whether, in the exercise of its awakened judicial discretion, the Tribunal should strike out the claimant's claims in terms of Rule 38(1)(b) (Unreasonable conduct of proceedings)**

81. The conduct of the claimant in failing to comply and in persisting in failing to comply with Judge Sutherland's Orders 5 and 8 of 11 December which the Tribunal has determined constitute acting unreasonably in that conduct of proceedings, has undermined both parties' expectation and entitlement to, and the Tribunal's ability to conduct, a fair hearing of the claims on the Final Hearing dates 20 to 27 July. It is further conduct which has brought about a high probability that the Hearing dates will be lost, neither party having been able to properly prepare for hearing. The conduct undermines the Tribunal's case management process and is conduct which will result in delay and cost, in both time and expense to both parties and the waste of public resource.
82. The balance of prejudice caused by the conduct sits with the respondent who having been convened to the proceedings by the claimant and compelled to defend them, are placed in a position by the claimant's conduct of

proceedings where they are unable to properly prepare for the listed Final Hearing. In the circumstances it is the Tribunal's Judgment that the claimant's unreasonable acting in the conduct of proceedings merits strike out in terms of Rule 38(1)(b), and the Tribunal so strikes out the claimant's claims on that ground.

**Whether, in the judicial exercise of its awakened discretion the Tribunal should strike out the claimant's claims in terms of Rule 38(1)(c)**

83. The claimant has failed to comply and, as at the date of Open Preliminary Hearing 26 June 2026 persists in non-compliance with Judge Sutherland's Orders 5 and 8 of 11 December. The Orders in question are Orders which are directly inform, and compliance with which is necessary to facilitate, parties' preparation for the Final Hearing set down to proceed in three weeks' time on 20 July 2026.
84. Although as long ago as February 2026 the claimant, in his written grounds of objection to the application for strike out stated that he intended to and would fully comply with the Tribunal's directions and Orders he has not so complied and has taken no steps towards doing so. That has been and remains his position notwithstanding the fact that he is fully aware that there has been no variation to the Orders, that the dates set down for Final Hearing remain in place and have not been postponed and that his application for postponement of today's Hearing had been refused by Judge Cairns.
85. In the exercise of its judgment the Tribunal concludes that this is not an instance of inadvertent oversight but rather one of a conscious and persisting disregard for the Orders of the Tribunal and the obligation and duty of fair notice, owed by each party to the other, which is an expression of one of the principles of natural justice. In the Tribunal's Judgment, the circumstances of the impact of the claimant's persisting failure to comply with the Tribunal's

Orders, upon the ability of parties to have, and the ability of the Tribunal to conduct a fair hearing on the dates set down the Tribunal is such as to merit strike out.

86. In the exercise of its discretion the Tribunal strikes out the claimant's claims in terms of Rule 38(1)(c).

**Whether the claimant has Title to present and the Tribunal Jurisdiction to consider the claimant's claims and complaints in terms of section 123(1)(b) of the Equality Act 2010**

87. The claimant's complaints, as recorded and defined by Judge Sutherland are respectively: -

(a) that the respondent discriminated against the claimant in terms of section 15 of the EQA by being told by his Manager, on 2 December 2022 that his job evaluation would not include MOULD duties and,

(b) In terms of section 27 of the EQA that he was subjected to a detriment on 17 February 2023 by a decision made by his Manager to contract out the MOULD duties with the effect that none of the painters would carry out such duties, that being a date said to have occurred after the claimant had accused his Manager "of discrimination".

88. While the date of the alleged protected act and it's detail remains lacking in specification, while the pleaded claim contains neither an offer to prove facts which if proved would constitute a causal connection between the alleged albeit unspecific protected act and the alleged detriment or any primary facts from which proved an inference to that effect might arise, it is the date of the alleged detriment, that is 17 February 2023, in the case of the complaint of

victimisation and, of the alleged unfavourable treatment, that is 2 December 2022, in the case of the section 15 EQA complaint, that are the operative dates for the purposes of the primary statutory period within which, in terms of section 123(1)(a) the claimant has Title to present the Tribunal's Jurisdiction to consider, such complaints.

89. The initiating application ET1 was presented in the case on 29 July 2025.
90. In terms of section 123(1) of the EQA a complaint of discrimination and/or victimisation must be made within three months of the act to which the complaint relates or such other period as the Tribunal thinks just and equitable.
91. In terms of Section 48(3) of the ERA a complaint of having suffered detriment by reason of having made a protected disclosure must be brought within three months, or if not reasonably practicable, such further reasonable period.
92. As noted by Judge Sutherland, at paragraph 23 of Note of output following Closed Preliminary Hearing: *"having regard to the dates of ACAS Conciliation, acts arising prior to March 2024 are affected by the issue of time bar"*. It is accordingly apparent that the complaint of section 27 victimisation is first presented some eleven months late and the complaint of section 15 discrimination arising from disability, is first presented some fifteen months late.
93. It is not pled and neither is there any suggestion that the Tribunal has jurisdiction in terms of section 123(3)(a) and accordingly the issue for the Tribunal to determine is whether the presentation of the complaints ,respectively fifteen and eleven months late can be regarded by it as presentation within "such other period as it thinks just and equitable" for the purposes of section 123(1)(b) of the EQA

94. The alleged acts given notice of as relied upon as giving rise to these complaints, are said to have occurred on 2 December 2022 and 17 February 2023. As is recorded by Judge Sutherland at para. 24 of her Note of output, the claimant has accepted that there were no acts of discrimination or whistleblowing detriment after February 2023. The claimant first presented his initiating application ET1 in June 2025 approximately two years outside the limitation period
95. The claimant seeks an extension of time on the basis that he was “off work for an extended period and was unable to obtain advice from his Union.”
96. The claimant was absent from work from 15 June 2023 until 23 January 2024 (7.5 months) and again from 30 October 2024 to 23 May 2025 (7 months).
97. Prior to his absence the claimant had four months between February and June 2023 within which to timeously raise his claims.
98. In addition, the claimant returned to work for nine months between January and October 2024 during which period he could have sought to first present the claims although late.
99. The claimant had access to advice and representation throughout that period. The claimant acknowledges in his particulars of claim that he understands there are strict timescales relating to Employment Tribunal complaints. Beyond stating that he was absent from work for parts of the relevant time period the claimant provides no real explanation as to why during the periods when he was not absent from work he took no steps to present his complaints despite being aware of the existence of strict time limits and despite the events on which he subsequently founds, being within his knowledge.

100. In relation to the, as yet not fully specified, complaint of having suffered detriment by reason of making a protected disclosure, the Tribunal is unable to conclude that it was not reasonably practicable for the claimant to have presented his complaints timeously. Nor is the Tribunal able to conclude that the period of time during which the claimant did submit his complaints represents a further reasonable period. The Tribunal concludes that, in terms of section 48(3) of the Employment Rights Act 1996, it lacks jurisdiction to consider and the claimant lacks title to present, his complaint of being subjected to detriment by the respondent by reason of his having made a protected disclosure, and that that complaint falls to be struck out and dismissed for want of jurisdiction.
101. The Tribunal concludes that it lacks jurisdiction to consider and the claimant lacks title to present his complaints of section 15 EQA discrimination and his complaint of section 27 victimisation, both in terms of section 123(1)(a) and (b) of the EQA and that those claims separately fall to be struck out and dismissed for want of jurisdiction.
102. Leave to amend having been refused and the claimant's complaints as currently pled and recorded by Judge Sutherland having been struck out and dismissed variously and cumulatively for want of jurisdiction and in terms of Rule 38(1)(b) and 38(1)(c), the Final Hearing set down to proceed in the case from 20 to 27 July 2026 no longer being required, falls to be and hereby is vacated.

