



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Number: 8001462/2025

Held in Dundee on Friday 17 July 2026

Employment Judge McFatridge

Dr A Dawson

**Claimant
In Person**

University of Stirling

**Respondent
Represented by:
Mr Wallace,
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Preliminary Hearing is that:-

1. The claimant's application to amend dated 15 June 2026 contained in pages 109-110 of the productions is accepted as an amendment of the claim;
2. The claimant's answers to questions received from the respondent sent on 5 and 12 June 2026 at paragraphs 3.3 – 3.7 are accepted as Further and Better Particulars of the claim;
3. Paragraphs 33 and 34 of the claimant's further particulars amount to an amendment of her claim and the amendment is allowed.
4. The claimant's claim of Breach of Contract has no reasonable prospect of success and is struck out.

REASONS

1. In this case the claimant claims that she was unfairly dismissed by the respondent and also claims that she was unlawfully discriminated against on grounds of disability. The respondents submitted a response in which they denied the claims. They accepted that the claimant was disabled but denied discrimination. The claimant lodged Further and Better Particulars of the claim

on 22 October 2025 following which various Orders were made with a view to focussing on the issues in the claim. The claimant subsequently lodged two documents. One was an application to amend the claim in relation to her claim under section 15 of the Equality Act. This amendment is set out in writing on pages 109-110. The respondent's representative indicated that they had no objection to this being accepted as an amendment of claim and I have indicated above that I have so accepted it. The second was a document headed "Further Particulars" and was first tendered on 23 October 2025 and re-tendered on 5 June 2026 together with a further document dated 12 June 2026 which bore to be answers to questions submitted by the Respondent on 20 May 2026

2. The respondent helpfully produced a table at pages 110-120 indicating those parts of the additional particulars which they objected to. This was on the basis that they considered these amounted to an amendment of the claim.
3. The specific paragraphs which they objected to were paragraphs 3.3, 3.4, 3.7 of the answers. Their reason for this was set out in a table provided by them and lodged at pages 114-115. They also objected to paragraph 33 and 34 of the Further and Better Particulars. Both parties presented written submissions which were supplemented orally. The written submissions are referred to for their terms and I shall not endeavour to repeat them here. With respect to each of the relevant matters I shall set out the parties' respective positions as briefly as possible before going to rule on these.

Answers

3.4

4. In this paragraph the claimant had been asked by the respondent to answer the question:-

"What reasonable adjustments is she alleging the respondents should have put in place prior to February 2024."

The claimant's answer was briefly that the claimant ought to have been referred to Occupational Health, that the respondents ought to have addressed the claimant's request for additional counselling sessions and that they ought to have set out their expectations in relation to what the claimant needed to do/achieve in order to secure continued employment.

The respondent's position

5. The respondent's position was that the above were never mentioned in the ET1 nor in the initial Further and Better Particulars. They also said that in any event the matter would be time barred. If an amendment was sought on the basis that this amounted to more than further particularisation of the initial claim then the respondent's position was that the amendment should be refused and they set out the **Selkent** principles on which they relied. So far as the balance of prejudice was concerned they pointed out that the claimant had a number of other claims which would still proceed to a Hearing and that it would extend the scope of Hearing and require additional witness evidence if the amendment were allowed. The claimant's position was that she was not aware that each reasonable adjustment should be treated as a separate claim. She did not believe the claimant was under a duty to list every possible thing that could have been done as a reasonable adjustment. The claim was in respect of the totality of what had happened in her case.

Answers to paragraph 3.7 of the Answers

6. The claimant had been asked at question 3.7 to set out a table containing the adjustments and had set out essentially the same adjustments with more detail. The respondent's position was as at 3.4 above.

3.3 of the Answers

7. At paragraph 3.3 the claimant was asked to set out the disadvantage which she was placed as a result of the PCP which the claimant answered at paragraph 3.2. The answer given by the claimant substantially repeated the point previously made to the effect that she was placed at a disadvantage because her disability necessitated her taking lengthy illness related absences and this made it more difficult for her to obtain external research funding. She stated that she was less able to work on complex matters under pressure and time constraints.
8. The respondent's position in relation to those paragraphs was essentially as set out for paragraph 3.4 above. The claimant's position was similar. She believed she was only providing Further and Better Particulars of her claim.

Discussion

9. Although the respondent in their summary of objections referred to paragraph 3.3 in relation to a claim of direct discrimination I considered that this was really a paragraph which referred to the claim of failure to make reasonable adjustments. The first question which I had to determine was whether the

additional information provided by the claimant was simply Further and Better Particulars of the claim or whether an application to amend was required.

10. In the original ET1 the claim of a failure to make reasonable adjustment is quite clearly signposted in paragraphs 85-88 of the claimant's paper apart. Paragraph 88 sets out in general terms and refers to "Dr. Dawson's Counter Proposal Documents sent to the University on March 2024 acknowledged Dr. Dawson's struggles with mental health and proposed an alternative solution". It goes on to state:-

"Rather than use it as a starting point for discussion on reasonable adjustments or for exploring alternative solutions the University dismissed Dr. Dawson's proposal without giving reason did not look to explore whether adjustments could be accommodated but insisted that Dr. Dawson must choose to accept their initially stated reduction in FTE or be made redundant."

11. Unfortunately, the "Counter Proposal Document" from March 2024 was not provided to me. What the claimant has done however is set out that she suffers from a disability and that as a result that she was placed at a particular disadvantage in relation to a PCP applied by the University. She has not set out any specific detail of the reasonable adjustments. What she does however appear to be saying is that the University applied a PCP that related in some way to academic staff being required to find externally funded research failing which they would be disadvantaged in their employment. The claimant's position was that because of her disability she was disadvantaged in finding externally funded research and that the respondents ought to have made adjustments for this.
12. I have to say that I do not therefore agree with the respondents when they say that the claim they are currently facing is not foreshadowed in the ET1. It was a claim which cried out for further particularisation but in my view it is not particularly unusual for a claimant (particularly an unrepresented claimant) who has to lodge the claim within a very tight time frame to lodge claims which set out the failure to make reasonable adjustments in general terms and where the precise nature of the PCP and adjustments requires to be teased out later. In my view no amendment is necessary and the claimant's answers can be accepted as further particularisation of her claim of their failure to make reasonable adjustments.
13. There remains the issue of time bar. Even if, as I have done I find that these claims were foreshadowed in the initial ET1 it is clear that there may be some issues around precisely when in terms of the Act the "failure" can be said to

have occurred. Because both parties only made reference to the issue of time bar in a general way in their submissions, I understood the respondent's primary position to be that the claims were out of time when considering the issue of amendment. It is not by any means clear that the claims are out of time if one accepts as I have done that these were contained in the original ET1. The claimant's argument on time bar was that the respondent's failure to make reasonable adjustments only really crystallised when they did an act inconsistent with making the adjustment and that that act was in fact her dismissal. Up to that point it would have been entirely possible for them to make any other adjustment. At the end of the day the precise factual matrix was not clear from the information I had but I considered that it was more likely than not that the position was as set out by the claimant. The claimant had referred to a document being provided with adjustments in August 2024. It may be that there is something in the respondent's answers to that document which can be taken as indicating that they had made a final decision to not to make the adjustments she sought but I was not shown this. On the information I had, however it would appear that on the basis of the claimant's averments this claim would not be time barred. If I am wrong in this, however, I still believe the tribunal has jurisdiction to hear the claim as it would be just and equitable to do so. I do not believe it will subject the respondent to significant additional expense if the claim is allowed however if it is not permitted the claimant will be denied the opportunity to put forward her claim which is that before dismissing her for failing to find sufficient external funding they ought to have made adjustments to prevent her disability placing her at a disadvantage in this process. The claimant's Further Particulars in relation to the failure to make reasonable adjustments are part of her pleaded case, the additional information already in the answers being further particularisation of her claim and not an amendment.

Claim of Direct Discrimination, Paragraph 33,34 of Initial Further and Better Particulars

14. Paragraph 33 and 34 relate to the answers provided by the claimant to the effect that the claimant was directly discriminated against by being treated less favourably than other colleagues in two respects. First (paragraph 33) was that the University had sought to secure voluntary arrangements with other employees in the past but did not choose to do so with the claimant and the second (paragraph 34) was that the claimant had received formal notice of redundancy on 31 August 2024 and that these terms were much less favourable than the terms of the University 2025 Voluntary Severance Scheme which the claimant heard about shortly after the ET1 had been lodged.

15. The respondent's position was that none of these claims were foreshadowed in the ET1. The existence of the Voluntary Severance Scheme was not in dispute however, this had been introduced subsequent to the claimant's dismissal by reason of redundancy. There was no reasonable likelihood that the claimant would be able to show that this was an act of direct discrimination when quite clearly the reason the claimant had not been offered voluntary redundancy is that the scheme did not exist at that time. As far as the voluntary scheme was concerned the claimant had not set out the identity of any comparator and it was unclear who the comparator would be. It was the respondent's view that quite clearly these amounted to amendments and they were substantial amendments. If they were allowed then new lines of enquiry would have to be carried out and the scope of the hearing would be extended. The claimant's position was that in relation to the Voluntary Severance Scheme it was clear that this would have been in contemplation before it was formally announced. The respondents are a large employer with very substantial resources. Publication of the Voluntary Severance Scheme made it clear that they had financial resources which could and in the claimant's view ought to have been used to keep her in employment and at least provide her with a better redundancy package than she received. If the respondents had thought to negotiate properly with her then such negotiation would have been informed by the Voluntary Severance Scheme was very much in contemplation.
16. The claimant's position was that if I was not with her in saying that these claims were in the initial claim then the amendment ought to be allowed on the usual **Selkent** principles. The amendment was not a significant one. The claimant's position was in general terms that she had been treated less favourably by the respondent because she was disabled. This was simply a further and more focussed instance of this. It would be just and equitable to allow the amendment to go forward despite any technical time bar issues. So far as the balance of prejudice was concerned, the prejudice to the respondent would be relatively slight. It is highly likely that no witnesses would actually be required. The prejudice to the claimant if this amendment was not allowed would be serious.

Discussion and Decision

17. The claimant referred to direct discrimination in her initial ET1 at paragraph 78 and 79. There is not much detail provided and all the claimant states is:-
- "Dr. Dawson asserts that the facts of the case suggests that this is likely to have been a consideration by of the University of Stirling in its actions and behaviours leading up to and ending in her dismissal."*

18. The ET1 in this case was lodged in June 2025. I was advised by both parties that the Voluntary Severance Scheme was not introduced until 30 June 2025. It is therefore clear to me that whatever the claimant had in mind when she was completing her ET1 in terms of her direct discrimination claim was unlikely to be the Voluntary Severance Scheme which at that time had not been announced. It is therefore my view that the two paragraphs (33 and 34) in her first Further and Better Particulars cannot be regarded as additional specification of a claim which had already been made. With regards to the matter referred to at paragraph 33 (the failure to negotiate) there are various parts of the narrative of her claim form where this is referred to but I do not believe it is clearly stated that the failure was said to be direct disability discrimination.
19. With regard to the balance of prejudice I was initially sceptical about the claimant's claim in relation to the Voluntary Severance Scheme for the reasons put forward by the respondents. The claimant does not suffer prejudice by not being able to put forward a claim which has no reasonable prospect of success and on the face of it it seems that there is little likelihood of success in the claimant's suggestion to the effect that she was not offered voluntary redundancy because of her disability when the respondent's counter position which was she was not offered voluntary redundancy because the scheme did not exist at that time. I therefore questioned the claimant closely about this aspect of her claim. The claimant's position essentially was that paragraphs 33 and 34 are to be read together. It is her view that in similar circumstances the respondent would enter into voluntary negotiations and she is asserting that the reason they did not do so in her case was because of her disability. Her position is that had such voluntary negotiations been entered into then the fact that the respondents were in the course of preparing a Voluntary Severance Scheme which was much more generous than the terms afforded to her is something which would be relevant to the Tribunal's decision. Applying the usual **Selkent** provisions I agree with the respondents that this is a substantial amendment. As regards the timing and manner of the amendment I note that the matter is contained in the claimant's initial Further and Better Particulars which were lodged in October 2025. This was some months after the Voluntary Severance Scheme was introduced in June of 2025. This followed a further document which the claimant had prepared in response to the ET3 which was lodged in September. The earlier document was not set out as a formal application to amend or Further Particulars.

20. I observe that the amendment was lodged more than three months after the Voluntary Severance Scheme was introduced although I do not have precise information as to when the claimant became aware of the Voluntary Severance Scheme. I would also note however that given that I am exercising discretion when deciding when not to allow an amendment or not the issue of time bar is simply one which I am required to take into account. The situation is different where I am required to decide whether or not the Tribunal has jurisdiction to hear a claim under section 123. The fact that the claim was not made until October 2025 is however one which weighs heavily against allowing the amendment at this stage. As far as the balance of prejudice is concerned, I note that this appears to be the only direct discrimination claim by the claimant. If the amendment is not allowed then there does not appear to be any such claim before the Tribunal. I do not consider that there will be much prejudice to the respondent if the claim is allowed. At the most I consider that it will simply require the respondent's existing witnesses to ask to answer some more questions. There may however be additional procedure required to identify precisely which comparator the claimant is relying on. At the end of the day the decision is a finely balanced one. The claimant is not represented and as far as I'm aware has no legal experience. She feels she has been treated less favourably than others because of her disability. She has set out the claim in fairly clear and limited terms – others were given a negotiated settlement, why wasn't this offered to her particularly as there appeared to be money on the table for voluntary severance. Was it because of her disability? At the end of the day I consider that it is appropriate to allow the amendment.

Breach of Contract

21. I was not entirely clear as to what the claimant's claim of breach of contract was and this is clearly something which was also the respondent's view. The claimant had accepted at an earlier stage in the proceedings before Judge d'Inverno that she was not making any claim of wrongful dismissal. She also confirmed to me that she had received her contractual notice pay in full. Her claim appeared to relate to her suggestion that the respondents had been in breach of the implied term of trust and confidence in the way they had treated her.
22. As pointed out by the respondents the Tribunal's jurisdiction in claims of breach of contract are set out in the Employment Tribunals Extension of Jurisdiction Orders Scotland Order 1994. This provides that:-

“Proceedings may be brought before an Employment Tribunal in a separate claim of an employee for the recovery of damages or any other sum (other than a claim for damages or for a sum due in respect of personal injuries) if:

- (a) The claim is one to which section 131(2) of the 1978 Act applies in which a court of Scotland would under the law for the time being in force have jurisdiction to hear and determine;*
- (b) the claim is not one to which article 5 applies;*
- (c) the claim arises or is outstanding on the termination of the employee’s employment.”*

23. Paragraph 5 of the order states it sets out various issues of claim which are excluded including a term imposing an obligation of confidence or a term which is a covenant in restraint of trade.
24. So far as damages for breach of contract is concerned the Courts and Tribunals have long expressed the view that where they are dealing with a claim of Breach of Contract in the employment context the normal contractual provisions allowing a guilty party to minimise their losses applies. The contract of employment is different from many contracts in that both parties enter it on the basis that it can be terminable at any point on giving notice. Where the contract is silent the Employment Rights Act provides statutory minimum periods of notice. Accordingly, the maximum damages which can apply for wrongful termination of contract is equal to the amount of notice which a party could have given in order to bring the contract to an end in terms of law. The maximum damages are therefore limited to the notice pay which a party was entitled to. This amount is known as damages for wrongful dismissal and the claimant has specifically said she is not making such a claim. In any event, she has said that she received her notice pay.
25. It is precisely because of this limitation on damages imposed by normal contractual principles on claims for wrongful dismissal that governments have over the years set up a statutory regime of compensation for unfair dismissal. The claimant is making a claim of unfair dismissal and no doubt this will be dealt with in due course. The only other claim which I think the claimant is suggesting that she is making is a claim that the respondents have injured her by breaching the implied duty of trust and confidence. This appears to me to be a claim for personal injuries which the Tribunal has no jurisdiction to hear. Accordingly, it is my view that her claim of breach of contract has no reasonable prospect of success and falls to be struck out.

4 August 2026

Date sent to Parties