Neutral Citation Number: [2026] EAT 146

Case Nos: EA-2022-001360-JOJ

EA-2022-001367-JOJ

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 23 September 2026

Before:

HIS HONOUR JUDGE AUERBACH

- -

Between:

F

Appellant

- and –

KING'S COLLEGE LONDON

Respondent

- -

- -

The **Appellant** did not attend, was not represented, and relied upon written submissions
Ronnie Dennis (instructed by Kingsley Knapley LLP) for the **Respondent**

Hearing date: 5 August 2026

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JUDGMENT

SUMMARY

PRACTICE AND PROCEDURE – Amendment

The employment tribunal did not err in refusing an application to amend the claimant's claim because it was not sufficiently particularised.

The tribunal could have chosen to allow the claimant the opportunity to clarify or particularise the application before deciding whether to grant or refuse it, but it was not an error not to do so.

It was also not an error to refuse to revisit the original decision in circumstances where the defect in the original application had not been remedied.

HIS HONOUR JUDGE AUERBACH:

Introduction and Litigation History

1. I will refer to the parties as they were in the employment tribunal, as claimant and respondent. The appeals in this case are about amendment. The tribunal litigation has an extensive history. It is not necessary in this decision to document every communication and event. I will start with a brief overview and provide further detail, as relevant and necessary to what I have to decide in order fairly to determine these appeals, later on.

2. The claimant was employed by the respondent from 25 April 2016 on a fixed-term contract which was subsequently extended to 31 March 2022. To allow for the determination of an appeal against the respondent's decision not to extend it thereafter, it was further extended to 30 April 2022. It appears that on 9 June 2022 the claimant was notified that his appeal was unsuccessful and that his contract was finally extended to, but would end on, 30 June 2022.

3. On 28 June 2022 the claimant, a litigant in person, presented an employment tribunal claim. This consisted of a completed claim form, including some narrative, together with an attached narrative document running to 26 close-typed pages. Multiple factual allegations were raised and multiple statutory provisions invoked. I will return to this later. On 15 August 2022 solicitors for the respondent submitted a completed response form together with an 8-page grounds of resistance. The tribunal emailed those to the claimant on 19 August 2022.

4. On 21 August 2022 the claimant emailed the tribunal, copying the respondent. The email included the following passage:

> **"3(a) Application 1: I am applying to attach a new additional label to the Claims made in my ET1. The facts of that ET1 Claim are unchanged, it is just the attachment of a further label to the same set of facts. The additional label is that the Respondent breached Section 47B of the Employment Rights Act (1996), which is in addition to the other pleaded claims which include breaches of Section 27 of the Equality Act (2010).**
>
> **3 (b) I give my consent to the Respondent to add any further point to its ET3 in response to the claim of a breach of Section 47B ERA (1996). But I do NOT consent for the Respondent to**

> **make any other amendment(s) to its ET3 and Grounds of Resistance. The Respondent will in due course be able to submit an ET3 response to the 2nd ET1 Claims."**

5. The claimant also wrote that "due to continued victimisation" by the respondent he would shortly be submitting a second claim form and applying for the second claim to be joined to the first claim, and that the second claim form "will also contain a claim that the Respondent has breached Section 47B of the Employment Rights Act (1996)." The claimant wrote that he was also applying for a short delay to the first hearing date, as it would be more efficient for that to be considered "so as to take stock of both the current ET1 (with the additional label), combined with the second ET1 which will shortly follow". The second claim would have the same respondent and relate to the same managers and culpable staff "as part of a continuous act (of discrimination) which is currently continuing."

6. On 17 October 2022 the tribunal wrote to the parties at the direction of EJ Wright, including the following:

> **"The claimant's application to amend is refused. It does not give any detail, for example what detriment he says he was subject to.**
>
> **No action will be taken in respect of further claims which the claimant may bring, until they are presented and accepted. Any further claims will be discussed at the preliminary hearing."**

7. The letter set out that the matter would be listed for a case-management preliminary hearing and a five-day full merits hearing. Further case-management directions were given.

8. The claimant had in fact submitted a second claim form on 6 September 2022. That contained some narrative and referred to the first claim. He did not attach any particulars document. However, later that same day he had submitted a third claim form. That indicated that when submitting the second claim form he had accidentally forgotten the attachment. With this third form he filed a document described as his second grounds of claim. This included a reference to his application of 21 August to amend the first claim, which he described as for a

"Selkent Amendment" and as an application "to attach a label to facts already pleaded". He also wrote that, as well as including a claim for breach of section 103A ERA 1996 in the present claim, he was applying for "a Selkent Amendment to attach a label of breach of section 103A to the facts already pleaded in the first claim as part of continuing acts which had continued into this claim." That document also gave the claimant's account of more recent events.

9. It therefore appears that when EJ Wright gave the directions that were conveyed in the letter of 17 October 2022, either it was before the second and third claim had been filed, or it was after they had been filed, but she had not been made aware of their existence.

10. On 23 October 2022 the claimant sent a further email to the tribunal, copied to the respondent's solicitors. He described it as an application for a "reconsideration/review" of the judge's refusal of his earlier application "for a Selkent Amendment to attach a label of breach of ERA (1996) 47B" to the ET1 grounds of claim lodged on 28 June 2022.

11. The claimant noted that the refusal had stated that the application did not give any detail, for example as to what detriment the claimant said he was subjected to. He submitted that the tribunal was required to give a fair reading to his claim and that the grounds of claim document was "densely filled with multiple details and multiple explicit citation of 'protected acts' and resulting 'victimisation', including as subheadings for details." The claimant went on to note that the respondent had not objected to the application, submitted that it was made as early as possible, that allowing the amendment would be neutral and the claims would still need to be determined, and that it would not increase the evidential burden to do so. He asked for more time to submit a schedule of loss, and referred in this regard to his second and third claims.

12. On 1 November 2022 the respondent's solicitors wrote opposing that application. They summarised the background, including stating that they had been sent a copy of the second

claim, to which (though it was substantially the same as the first claim) they had responded. They stated that they had been made aware from the content of the correspondence of the existence of the third claim with particulars, but had not yet been sent a copy of either of these.

13. On 8 November 2022 the tribunal wrote at the direction of EJ Wright. It stated:

> **"The claimant's application for a reconsideration of the decision to refuse the application to amend his claim is rejected. There is no possibility of the decision being varied or revoked."**

14. The claimant was granted an extension of time to provide a schedule of loss. The letter also stated that the second and third claim would be considered at the preliminary hearing.

15. Thereafter the claimant presented a fourth claim. There were a number of preliminary hearings and ultimately all of the claims were heard at a multi-day hearing in November 2025. The complaints considered did not include any complaint of detrimental treatment on grounds of protected disclosures, but did include a complaint of unfair dismissal for the reason or principal reason of having made protected disclosures, which was unsuccessful. A complaint of ordinary unfair dismissal and two complaints of harassment succeeded. All other complaints were dismissed. There was a subsequent remedy hearing and remedy decision.

The Appeals

16. This hearing before me related to two appeals, both instituted by the same notice of appeal. The first is against the 17 October 2022 refusal of the amendment application and the second is against the 8 November 2022 refusal of a reconsideration of that decision.

17. The original grounds of appeal were considered by a judge on paper not to be arguable. The claimant requested a rule 3(10) hearing. At that hearing the judge directed that there be a Preliminary Hearing (PH) at which both parties could be heard. At that PH Anna Greenley of counsel appeared for the claimant under the ELAAS scheme and Ronnie Dennis of counsel for

the respondent. The judge directed that two restated grounds (only), drafted by Ms Greenley, be permitted by amendment to proceed to a full appeal hearing. Those grounds are as follows:

> **"Restated Ground 1: The ET erred by failing to identify and apply the correct legal test/principles, as evidenced by the lack of proper reasons, failing to take into account relevant considerations (namely the nature of the amendment, the timing and manner of its making and the balance of prejudice) and in doing so reached a conclusion that in all the circumstances, was not open to it.**
>
> **Restated Ground 2: alternatively, the ET erred in failing to provide the Claimant with an opportunity to clarify the amendment before the application was determined in accordance with *Amey Services Ltd and another v Aldridge and others* UKEATS/0007/16/JW."**

18. I had core and supplementary bundles and an authorities bundle. In correspondence prior to the hearing the claimant indicated that he would not be attending, and wished to rely upon the skeleton argument that had been prepared and tabled by Ms Greenley for the purposes of the PH and his own skeleton argument dated 22 July 2026, with Appendices, that he sent in. On 28 July 2026 the claimant emailed submissions and comments on the authorities and attached a further authority. On 31 July 2026 he emailed a chronology. Mr Dennis for the respondent put in a skeleton argument and attended the hearing and made oral submissions.

Discussion

19. The tribunal did not, in its decisions, refer to any authority, nor otherwise to the principles emerging from the authorities, concerning applications to amend. However, it is well established that such a failure does not amount to an error of law as such. What matters is whether the tribunal in fact erred by failing to take the correct approach in its substantive decision, although the absence of a statement of the law may make it harder for the EAT to tell.

20. Mr Dennis submitted that I could be confident that the tribunal had not, in substance, erred in its approach to the law, for two reasons. Firstly, it is part of the routine work of employment judges to consider applications to amend, and the principles governing them, as set out repeatedly in a number of well-known authorities starting with **Selkent Bus Co Ltd v**

Moore [1996] ICR 836 (EAT), are well-established and familiar.

21. Secondly, I could be confident that the tribunal did not err in law, because the first decision did identify the specific reason why the application was refused, being that it did not give any detail, such as of the detriments that the claimant said he was subjected to for making protected disclosures. As a matter of law, it is proper for a tribunal to refuse an application to amend because the proposed amendment has not been properly set out or particularised. Indeed, he argued, the authorities establish that the tribunal would err if it *granted* an insufficiently particularised application, on the basis that the missing particulars could be provided later.

22. Mr Dennis also argued that the tribunal did not err in not providing the claimant with the opportunity to provide clarification or further particulars, prior to determining the application to amend, because, while this was an *option* that the tribunal *could* have chosen to take, it was not, in law, an error not to do so, and instead simply to reject the application.

23. I turn to consider relevant authorities.

24. In **Remploy Ltd v Abbott and others**, UKEAT/0405/14/DM the EAT (HHJ Serota QC) overturned a decision of the employment tribunal permitting amendments to the multiple claimants' complaints of unfair dismissal. At [72] the judge cited a passage from his own earlier decision in **British Gas Services Limited v Basra**, UEKAT/0194/14, including the following, within [48] of **Basra**:

> **"It is essential before allowing an amendment that it must be properly formulated, sufficiently particularised, so the Respondent can make submissions and know the case it is required to meet."**

25. At [87] of **Remploy** the judge said:

> **"These amendments, as can be seen, are not particularised as they should have been before permission to amend could have been granted. In the absence of particularised amendments it was impossible for the Employment Tribunal or for the Respondent to consider the effect of those amendments, in particular in relation to previous case management and whether the**

timetable for the hearing would be affected."

26. At [89] the judge said:

> **"I consider, however, that the Employment Tribunal placed itself in great difficulty by failing to ensure that before it granted permission to amend, it had before it a properly particularised proposed amendment. This failure in itself in sufficient to flaw the exercise of discretion. Without that the Employment Tribunal was simply not in a position to consider the effect of the proposed amendments on existing and future case management and in particular whether the previously agreed model was achievable in the light of the fragmentation of the issues."**

27. At [90] he said:

> **"If the Claimants wish to pursue an application for adding the "new" issues, they should do so on the basis of properly formulated and particularised amendments."**

28. **Amey Services Limited v Aldridge**, UKEATS/0007/16/JW was another case in which the EAT (Lady Wise) overturned the decision of an employment tribunal to permit an amendment to the claims. There were a number of grounds, including that the judge had erred by permitting amendments that were not properly particularised. At [23], citing **Remploy**, Lady Wise agreed that the judge in the instant case had erred in that way. But she continued:

> **"However, I do not consider that the only option available to the judge was to refuse the amendments. Again, if there is known to be a problem with particularisation, as there was here, an opportunity could be given to remedy that before any decision is reached and a determination of the proposal to amend deferred. There is a clear inconsistency in allowing amendments at the same time as requiring them to be further particularised, but where outright refusal of the amendments would lead to undue hardship I see no reason in principle why adjustment of the proposed terms of the amendments cannot take place prior to the determination being made. The focus of the arguments might then be on whether and in what time frame such refinement of the proposed amendments should be allowed but those arguments would be take place before the single stage decision on the granting or refusal of amendment itself."**

29. In **Chaudhry v Cerberus Security and Monitoring Services Limited** [2022] EAT 172 the EAT (HHJ James Tayler) overturned a decision refusing the claimant's application to make amendments to his claim. At [25], citing the foregoing passage in **Amey**, the judge said:

> **"The options for each proposed amendment are allow, refuse or clarify."**

30. The judge continued, at [26]:

> **"It appears to me that the employment judge may have thought that a more focussed**

> **application to amend might be made at a later stage, because he referred to his decision to refuse the amendment being "in principle". Be that as it may, any opportunity to clarify an amendment, that is considered to be consistent with the application of the overriding objective, should be given before the application is determined. Determining an application to amend is a case management decision made under the general power of Rule 29 of the Employment Tribunal Rules 2013. Rule 29 specifically provides that a further case management order may "vary, suspend or set aside an earlier case management order where that is necessary in the interests of justice". That provides a possible power to consider an application to amend again. However, the apparently broad power can generally only be used where there has been a material change in circumstances… The fact that an application to amend, that was refused when badly drafted, is now well drafted, is unlikely to amount to a material change of circumstances if it seeks to add the same claims. Hence, if clarification is to be permitted, it should be before the application to amend is determined."**

31. The appeal was allowed on a number of bases concerning the exercise of balancing hardship, whether the application involved relabelling, and the approach to time-limit issues.

32. I make the following points.

33. First, as all of the authorities recognise, it is important to keep in mind that we are concerned here with case-management decisions, which fall to be taken by tribunals in circumstances which are infinitely variable, as to both substance and context. The principles guiding the employment tribunal are those in the **Selkent** line of authorities and the overriding objective. The EAT should not interfere unless the tribunal has made a substantive error of law, plainly overlooked a relevant consideration, taken into account an irrelevant consideration or acted outside the generous ambit open to any tribunal properly applying the law.

34. That said, in principle the tribunal should not grant a proposed amendment which it considers is not sufficiently particularised. Of course, whether it is or is not sufficiently particularised is itself a fact-sensitive question which will involve an evaluative judgment by the tribunal. But this question should in principle be approached by reference to whether the application is sufficiently clear and particularised to enable it to be fairly considered and determined by an application of the **Selkent** guidance.

35. In that vein **Basra** and **Remploy** point to two particular touchstones when a tribunal is

considering that question. Has the tribunal been given sufficient particulars to enable it properly to consider the implications of granting the amendment, including for matters relating to ongoing case-management, such as disclosure or witness evidence? Are the particulars sufficient to enable the respondent fairly to defend the amended complaint, and the tribunal to know what complaints and issues it has to determine, if permission is granted?

36. Next, it is, potentially, an option for the tribunal, in the given case, neither to grant nor to refuse the application as it stands, but to allow an opportunity for it to be clarified or particularised, before that substantive decision is then taken. However, in so far as Ms Greenley's skeleton argument for the PH (which the claimant, as noted, adopted) suggested that it would be an error for the tribunal to *refuse* such an application which is insufficiently particularised *without* first allowing that opportunity, I do not agree. The foregoing authorities, in using the very word "option", make clear that this is, in principle, something that the tribunal *could* do, not something that it is obliged to do before deciding whether to allow or refuse.

37. In some cases, for example, as was envisaged in **Amey**, the tribunal may consider that it should exercise that option because it would cause "undue hardship" to the claimant not to do so; or simply, I would add, because it accords with the overriding objective in the given case. In others, however, a tribunal might properly take the view that there is no good reason to offer that option, and that it might in fact be deleterious to the ongoing progress and good management of the claim to do so, rather than simply rejecting the application as it stands.

38. Next, as was noted in **Chaudhry**, there is a long-established general principle – the modern line of authorities starts with the decision of Elias P, as he then was, in **Hart v English Heritage**, UKEAT/0055/06 – that a case-management decision, once taken, should generally not be revisited, and varied or revoked and taken afresh, unless there has been a material change of circumstances since it was taken. But it is important to keep in mind that this principle is

engaged when the tribunal is indeed being asked in substance to revisit or vary the previous order, by deciding afresh essentially the very same matter which that previous order decided.

39. That the tribunal is indeed being asked to decide essentially the same matter afresh may in some cases be readily apparent, such as where it is being asked to revisit a decision that a particular issue should be determined at a preliminary hearing, rather than being left to the full hearing. But in cases where a fresh application to amend is made, which is not in identical terms to the previous application, even though it is in overlapping territory, the **Hart v English Heritage** principle may not be straightforwardly applicable.

40. This does not mean, however, that the facts of the previous application, and its refusal, are bound to be irrelevant in such a case. Rather, they may be treated as forming part of the relevant history or background circumstances, when deciding what decision to make upon the fresh application. Considerations of fairness certainly do not necessarily require the tribunal to indulge multiple similar applications. Indeed, the tribunal may, in a given case, consider that the overriding objective, and the disruption, and consumption of tribunal and party resource, in considering a fresh overlapping application, points the other way. But it is a matter for evaluation by the tribunal on a fact-sensitive, case-by-case basis.

41. I turn to consider the application of these principles to the present appeal.

42. The place to start is the first claim form. In section 8 the claimant ticked that he was complaining of unfair dismissal, age, race, disability and sex discrimination, and seeking a redundancy payment, notice pay, holiday pay, arrears of pay, and other payments. He also ticked the box to indicate that he was making another type of claim that the employment tribunal can deal with, and referred to (among other things) automatic unfair dismissal, dismissal as acts of discrimination, personal injury, breach of contract, wrongful dismissal, harassment,

continuous act, aggravated damages, breaches of section 44 and 100 **Employment Rights Act 1996**, breach of the **Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2003**, victimisation and breach of the *Public Sector Equality Duty* and harassment. The claimant also ticked the box asking whether, if your claim includes a protected disclosure claim, you wish it to be forwarded to the relevant regulator on your behalf.

43. The claim form was accompanied by a 26-page close-typed narrative document. Mr Dennis, in his skeleton argument, fairly described that document as containing a vast number of factual allegations, most of which were not linked to any cause of action within the tribunal's jurisdiction. It gave a wide-ranging account of myriad events going back to the very start of the claimant's employment by the respondent in 2016.

44. At para. 35, eight pages in, the claimant listed a number of sections of the **1996 Act** and of the **Equality Act 2010** which he said had been breached, including section 43B of the former and section 27 of the latter. At para. 41 he referred to being "victimised as a whistleblower". At para. 42 he wrote that paras. 43 – 45 listed "some of my actions" for which he had been victimised. Para. 43 then, however, extended over some four pages, and a narrative referring to multiple alleged incidents. Para. 44 asserted that "the way I was subsequently treated for these protected acts" breached multiple sections of the **1996 Act** and the **2010 Act**, among which he listed section 43B of the former and section 27 of the latter. At para. 27 the claimant referred to protected disclosures and at para. 28, occupying most of two pages, he referred to what he described at different points as victimisation, protected acts and protected disclosures. Before the document ended there were interjected into the narrative two more lists of multiple statutory provisions including section 43B of the **1996 Act** and section 27 of the **2010 Act**.

45. In her PH skeleton, now adopted by the claimant, Ms Greenley submitted that it was arguable that the original claim conveyed that the claimant was complaining of detrimental

treatment on grounds of protected disclosures, and that permission to introduce such a complaint was therefore not required, but only particulars. She noted that the respondent had included in its grounds of resistance a denial that he had made any protected disclosures and/or that he had been subjected to any detrimental treatment on the ground of having done so.

46. In any event, Ms Greenley's skeleton argued, it should have been clear to the tribunal that in the amendment application the claimant was simply seeking to add a new legal label to the facts already pleaded, not seeking to introduce any new factual allegations. Having regard to that, and the timing of the application, a proper consideration and application of **Selkent** principles would very likely have led to the amendment being allowed, with the question of further particulars then to be considered at the forthcoming case-management hearing.

47. I agree that the amendment application did make it clear that the claimant was not applying to introduce any new factual allegations, but was applying to add section 47B complaints in respect of existing factual allegations set out in the original claim form and accompanying particulars of claim document. But I also agree with Mr Dennis that the tribunal was entitled to reject the application on the basis that it was deficient in any particulars. It did not identify which claimed factual communications by him, referred to in the original particulars of claim, he wished to assert by amendment amounted to protected disclosures, nor which claimed conduct on the part of the respondent, referred to in the claim, he wished to assert by amendment amounted to detrimental treatment on grounds of such disclosures.

48. As I have described, the original particulars of claim included some references to victimisation, to section 27 of the **2010 Act**, and indeed to section 43B of the **1996 Act** (the definition of a qualifying disclosure), to protected disclosures and to whistleblowing. They did, at one point, Mr Dennis fairly acknowledged, appear to identify two particular communications that were said to be protected disclosures. But they did not enable the tribunal, or the

respondent, to work out, overall, which of all the factual matters raised in the original claim were the matters that the claimant now wished to rely upon as protected disclosures, and which of them he now wished to rely upon as conduct done on grounds of such disclosures.

49. Even if the application's reference to section 27 was intended to mean that he wished to rely on the same facts supporting each victimisation complaint, as also supporting a section 47B complaint (which was not unambiguously clear), the original claim had not itself identified with clarity which factual matters in the long narrative were relied upon as founding victimisation complaints. This difficulty was compounded by the scattergun approach of the wide range of references to statutory provisions and legal concepts periodically appearing in the document.

50. Making due allowances, as a tribunal should, for the fact that a litigant in person may not draft with the precision of a lawyer, a claim does still need to get across the essential factual elements of what they say happened, that they believe gives them the foundation for each of the legal complaints that they are trying to bring. It is not a proper approach, simply to set out a lengthy account of everything that has happened, to cite a long list of legal provisions, concepts or causes of action, and then leave it to the tribunal and/or the other party, to attempt to make sense of the claim. See the discussions of these various points in, for example, **Pranczk v Hampshire County Council**, UKEAT/0272/19 and **Moustache v Chelsea and Westminster Hospital NHS Foundation Trust** [2025] EWCA 185; [2025] ICR 1231.

51. The framing of the original particulars of claim in this case also left it, at best, unclear whether the claimant, when he wrote them, truly appreciated the difference between a victimisation complaint and a protected-disclosure complaint, and was indeed consciously seeking initially to bring the latter, in addition to the former. That impression is borne out by the framing of the amendment application. That did, at least, indicate, in terms, that at that point the claimant was now seeking to add complaints of breach of section 47B as distinct from,

and additional to, the existing victimisation complaints (whether or not wholly overlapping with them). But it did not, as I have said, address, or make good, the deficiency in the original claim.

52. I note also that, while the same facts *may* be argued to support complaints of both types, the legal elements are not identical, and it is not the case, for example, that something which is a protected act will also always amount to a protected disclosure. In all events, given the state of the original claim, the information given in the application as it stood would not have enabled the respondent, or the tribunal, to discern which of the original factual allegations the claimant wished to rely upon henceforth as the basis for one or more section 47B complaints. I add that the fact that the respondent included in its grounds of resistance a denial of any section 47B complaint does not assist the claimant. Those two short paragraphs themselves fairly asserted that the claimant had not said which parts of his claim were said to be protected disclosures (or how) nor which were said to be detriments because of those protected disclosures.

53. All of that being so, I agree with Mr Dennis that the tribunal was entitled to reject the original application on the basis that it lacked sufficient particulars. The tribunal was also entitled to take the view that the reconsideration application did not take matters further. It did not itself provide the missing particulars. The claimant's reference to the original particulars of claim being "densely filled" with citations of protected acts and victimisation did not signpost the tribunal to any of the particular factual allegations relied upon as the basis for the essential elements of a protected disclosure, and conduct done on the grounds of such disclosures.

54. It was therefore not an error for either decision not to advert to other considerations that might weigh in the balance in a given case. The lack of particulars alone was sufficient to warrant, and explain, the rejection of both applications.

55. I did raise with Mr Dennis that, while, when she considered the original application, the

judge was not aware of the second/third claims, she was aware of them when she considered the second application. However, without setting out the same exercise in relation to their contents, I agree with Mr Dennis's submission that this does not assist the claimant, because the document attached to the third claim itself did not repair the original defect.

56. For all of these reasons ground 1 fails.

57. Turning to ground 2, as I have explained, it is not the law that the tribunal was bound to provide the claimant with an opportunity to provide particulars, before deciding whether to accept or reject his applications. Nor was wrong not to do so on the particular facts of this case, as otherwise he would be shut out from ever being able to apply to amend to introduce even properly particularised complaints by application of **Hart v English Heritage** principles. For reasons I have explained, the refusal of these applications would *not* automatically preclude a fresh, properly particularised application to add section 47B complaints being made, and, potentially, granted. On that scenario, the fact that a previous unsuccessful application to introduce section 47B complaints had been made might be said to be a relevant consideration, but the tribunal would not be bound to regard it as necessarily fatal to the application.

58. What happened in the further conduct of the litigation in point of time after the tribunal took the two decisions that are the subject of these appeals cannot be relevant to whether the tribunal erred in those decisions when it took each of them. However, Mr Dennis raised the following features. There were case-management hearings on 13 December 2023 and 25 February 2025, directions on 18 June 2025, further case-management hearings on 30 June and 10 July 2025, further directions of 5 September 2025 and then another case-management hearing on 11 September 2025. Much of the time spent at those hearings, and much of the correspondence in between, was devoted to seeking to clarify and particularise the complaints and arrive at a complete and final list of issues.

59. At the 10 July 2025 hearing EJ Burge determined that the original claim form did not contain an identifiable section 47B complaint in the terms that the claimant was then seeking to introduce by his proposed amendments to the running draft list of issues; but, at that hearing, and in a follow-up letter of 5 September 2025, she gave directions enabling an application to amend to introduce such complaints to be made. The claimant then did make such an application (albeit, it appears, only to amend the second to fourth claims). Then, at the further case-management hearing on 11 September 2025 that application was considered and adjudicated by EJ Burge, including taking into account the history of the applications to EJ Wright and her decisions. The application was refused for the very full reasons given.

60. Against that backcloth Mr Dennis submitted that these appeals were in any event academic. There had been nothing to stop the claimant making a properly particularised application to amend at any time after EJ Wright's decisions, and there were a number of specific opportunities to do so. He in fact did so on 9 September 2025, but he could have done so much sooner. When he did, it was considered, and properly rejected by EJ Burge.

61. I am not persuaded that this showed that the present appeals were academic, in particular given that one reason why EJ Burge rejected the September 2025 application was because it had come so late, and the matter was coming to a full merits hearing in November 2025. Had the claimant made a properly-framed application in 2022 the outcome might have been different. But, as I have concluded, both ground 1 and ground 2 in any event fail on their merits.

Outcome of the Appeals

62. For the foregoing reasons the appeals are dismissed.

Costs Application

63. In this course of his skeleton argument the claimant applied for three hours of costs on

the basis of the respondent's unreasonable management of the bundle for this hearing. In summary, he complained that its solicitors had omitted relevant versions of its pleadings from the bundle that they had prepared, putting him to unnecessary work to get this put right. They had also included additional material in the bundle, relating to later developments in the litigation, that he considered was irrelevant. He annexed correspondence with the respondent's solicitors and the EAT in which he had raised these matters.

64. Mr Dennis submitted there was no unreasonable conduct. The respondent's solicitors had taken a view when preparing the first version of the original bundle, that including the final consolidated amended grounds of resistance was sufficient to comply with the Practice Direction and for the purposes of this hearing. The claimant then asked for all versions of those documents to be included and that was then done. There was nothing remarkable about this.

65. It is very common for one party to want to put documents before the EAT that are not in the bundle produced by their opponent. Bundles also often contain documents that one party wishes to refer to, but the other considers to be irrelevant. Such differences should be, and usually are, resolved by dialogue. There may, if needed, be a ruling from the Registrar or a judge, before, or at, the hearing. Although the EAT, like all courts, rightly expects parties to be disciplined about the size and content of bundles, the existence of such differences is not, as such, unusual. There was nothing remarkable about what happened in this case. I agree with Mr Dennis that the respondent's solicitors' handling of the bundle does not amount to unreasonable conduct that should sound in an award of costs. The costs application fails.