Neutral Citation Number: [2026] EAT 156

Case No: EA-2026-SCO-000052-LD

EMPLOYMENT APPEAL TRIBUNAL

52 Melville Street
Edinburgh EH3 7HF

Date: 8 October 2026

Before :

RECORDER FRASER BUTLIN KC

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Between :

RABAHA ARSHAD **Appellant**

- and –

THE UNIVERSITY OF GLASGOW **Respondent**

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- -

Miss Rabaha Arshad the **Appellant**
Brodies LLP for the **Respondent**

Hearing date: 5 October 2026

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JUDGMENT

SUMMARY

[Statements of Case – Strike out]

When determining whether a claim has been brought, the tribunal should undertake an objective analysis of the paper apart. In this case, it was clear that the Appellant had expressly referred to protected disclosures and detriments flowing from them. In those circumstances, the requirement for the Appellant to apply to amend her claim to include claims of protected disclosure detriment amounted to a final determination of that claim and was tantamount to an inadvertent strike out (see **Mendy v Motorola Solutions UK Ltd** [2022] ICR).

RECORDER FRASER BUTLIN KC:

1. This is an appeal against a case management preliminary hearing judgment of the Glasgow employment tribunal that was sent to the parties on 17 April 2026. The judgment held that the claimant's ET1 did not include claims of unfair dismissal and those related to public interest disclosure and that she would be required to make an application to amend her case to add these claims.

2. I refer to the parties as they were below.

Key Facts

3. The claimant, who is disabled, is a postgraduate research student at the Respondent University. She started working part time on 13 September 2021 and resigned on 22 June 2024. She states in her claim form that after her resignation she wrote to the principal's office and she was issued with an apology. Thereafter she applied for a role as a Residence Life Welfare Officer but was not appointed. The claims she brings fall into two parts. One relates to issues that arose in her first period of employment with the Respondent. The second relates to the fact that she was not appointed as a Residence Life Welfare Officer. It is the first part with which this appeal is concerned.

4. The claim form submitted by the Claimant includes the following:

> "During my employment I was victimised for speaking up about breaches of Equality Act and other university procedures (such as secondment)."

She listed her summary of claims as victimisation under **Equality Act** s.27, Harassment under **Equality Act** s26, discrimination arising from disability and failure to make reasonable adjustments.

5. At the end of her paper apart, after paragraph 97, the claimant had a heading "Protected disclosures". She then set out in two bullet points the following:

> "The main protected disclosure during employment has been in paragraph 70, the detriment from that consisted of delay in occupational health referral, contents of the

> occupational health referral, what was said in meetings, delay in implementing reasonable adjustments, delay in allowing to raise grievance and the consequences of that on my health, finances and employment relation.
> - The second protected disclosure was with the principal's office, paragraph 87. The university took ownership of matters, but the delayed response meant that the window of early conciliation was expired, and afterwards I was too unwell and cared to bring to tribunal."

6. Paragraph 70 refers to the Claimant having sent a stressors document to a manager that she said "was a protected disclosure" in which she had "spoken up about breach of contract and breach of **Equality Act** that I had experienced." Paragraph 87 referred to the Claimant raising "breaches of **Equality Act** and other institutional obligations" in a letter she wrote to the Principal.

Judgment of the Tribunal

7. In the note of the preliminary hearing that took place on 13 April 2026, the tribunal recorded that the individual acts of discrimination and breaches of contract that the claimant was alleging were not clear from the ET1. Consequently, on initial consideration she had been directed to set out a summary of case. The tribunal noted that during the discussion of the claimant's claims, she had stated that "the claims in respect of the first part had been expanded and that this now included claims of unfair dismissal and claims related to public interest disclosure." The note states that the Employment Judge had explained to her that "none of these claims had been set out in her ET1 even on the most generous reading of this document and that she cannot simply add new claims at will."

8. In the case management order, at paragraph 12, the tribunal directed that within 14 days of the hearing, the claimant make "An application to amend setting out (first) any additional claim which the claimant seeks to add against the present respondent identifying the factual and legal basis of any such claim…".

The law

9. The rules governing proceedings before the ET are contained within schedule 1 of the

Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 ("**ET Rules**").

10. By rule 29 it is provided:

> The Tribunal may at any stage of the proceedings, on its own initiative or on application, make a case management order. … the particular powers identified in the following rules do not restrict that general power. A case management order may vary, suspend or set aside an earlier case management order where that is necessary in the interests of justice, and in particular where a party affected by the earlier order did not have a reasonable opportunity to make representations before it was made.

11. Rule 1(3)(a) explains that a case management order is:

> an order or decision of any kind in relation to the conduct of proceedings, not including the determination of any issue which would be the subject of a judgment;"

12. An ET judgment is defined by rule 1(3)(b), as (so far as relevant):

> a decision, made at any stage of the proceedings (but not including a "a decision, made at any stage of the proceedings (but not including a decision under rule 13 or 19), which finally determines—
>
> (i) a claim, or part of a claim, as regards liability, remedy or costs (including preparation time and wasted costs); or
> (ii) any issue which is capable of finally disposing of any claim, or part of a claim, even if it does not necessarily do so (for example, an issue whether a claim should be struck out or a jurisdictional issue);…"

13. By rule 37 **ET Rules**, the power to strike out a claim (or response) is provided, as follows:

> (1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—
> (a) that it is scandalous or vexatious or has no reasonable prospect of success;
> (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
> (c) for non-compliance with any of these Rules or with an order of the Tribunal;
> (d) that it has not been actively pursued;
> (e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

14. At rule 37(2), however, it is made clear that:

> (2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

15. By rule 56, read together with rule 53(1)(c), it is made clear that the consideration of whether a claim (or response) should be struck out under rule 37 shall take place in public (not at a private, or closed, preliminary hearing).

16. Where an Employment Tribunal has struck out a claim, or part of a claim, that will amount to a final determination or disposal of that matter such as to mean that it has given a judgment in that regard (see the definition at rule 3(1)(b)).

17. In **Mendy v Motorola Solutions UK Ltd** [2022] ICR 9 Mrs Justice Eady determined the effect of a case management order where it required a claimant to make an application to amend their claim, when that claim was apparent on the face of the ET1. She held that to do so amounted to a final determination of the claimant's claim and was tantamount to a striking out of the claim. Therefore, it amounted to a judgment. Having been made at a private preliminary hearing, without giving the claimant proper opportunity to make representations on the possible striking out of the claim, this amounted to an error of law. There are very obvious parallels to the appeal before me today.

18. When considering what the issues were that had to be determined by a tribunal, the Court of Appeal stated in **Moustache v Chelsea and Westminster Hospital NHS Foundation Trust** [2025] EWCA Civ 185 the following:

> 33. First, proceedings in the ET are adversarial. The range of claims that may be brought and the range of substantive or procedural answers that may be raised to those claims are defined by law, principally by statute. In any given case the primary onus lies on the parties to identify, within those ranges, which claims they wish to bring and which answers they wish to advance.
>
> 34. Secondly, the issues raised by the parties are those which emerge clearly from an objective analysis of their statements of case. Identification of the issues does not

> involve reference to other documents which do not have the status of pleadings and come later. Nor should the process be a complex or difficult one. …
>
> 36 Thirdly, where a party seeks the ET's ruling on an issue that emerges from an objective analysis of the statements of case (and falls within its jurisdiction) the ET has a duty to address that issue. This is the core function of the tribunal. That does not mean that the ET has to resolve every issue that is raised in a case. Sometimes a party will not press all the claims that have been pleaded; the ET is not obliged to address those which are raised but later abandoned: see Mensah v East Hertfordshire NHS Trust [1998] IRLR 531. And the ET needs only decide enough to reach a conclusion on the claims that have been pressed. Subject to these points, however, I would accept the broad submission of Ms Monaghan, that the ET does not have a discretion not to consider and determine a claim that has been brought before it.
>
> 37 Fourthly, however, the ET's role is arbitral not inquisitorial or investigative. It must perform its functions impartially, fairly and justly, in accordance with the overriding objective, the law, and the evidence in the case. It may consider it appropriate to explore the scope of a party's case by way of clarification. That may, in particular, be considered appropriate in the case of an unrepresented party. Whether to do so is however a matter of judgment and discretion which will rarely qualify as an error of law such that the EAT can interfere. The ET has no general duty to take proactive steps to prompt some expansion or modification of the case advanced by a party where that might be to their advantage.
>
> 39 The following analysis seems to me correct in principle and consistent with the case law. The starting point is to consider what claims emerge from an objective analysis of the statements of case. A failure by the tribunal to identify and address those claims is liable to amount to a breach of its core duty and hence an error of law. A failure to identify and determine a claim that does not emerge from such an analysis can amount to an error of law but only in rare or exceptional circumstances of the kind outlined in Drysdale. It is in this overall context that the role of an agreed list of issues falls for consideration.

19. In relation to the assistance to be given to litigants in person, The Court of Appeal in **Drysdale v Department of Transport** [2014] EWCA Civ 1083 at paragraph 49 set out the general principles that apply. They stated:

> (1) It is a long-established and obviously desirable practice of courts generally, and

employment tribunals in particular, that they will provide such assistance to litigants as may be appropriate in the formulation and presentation of their case.

(2) What level of assistance or intervention is 'appropriate' depends upon the circumstances of each particular case.

(3) Such circumstances are too numerous to list exhaustively, but are likely to include: whether the litigant is representing himself or is represented; if represented, whether the representative is legally qualified or not; and in any case, the apparent level of competence and understanding of the litigant and/or his representative.

(4) The appropriate level of assistance or intervention is constrained by the overriding requirement that the tribunal must at all times be, and be seen to be, impartial as between the parties, and that injustice to either side must be avoided.

(5) The determination of the appropriate level of assistance or intervention is properly a matter for the judgment of the tribunal hearing the case, and the creation of rigid obligations or rules of law in this regard is to be avoided, as much will depend on the tribunal's assessment and 'feel' for what is fair in all the circumstances of the specific case.

(6) There is, therefore, a wide margin of appreciation available to a tribunal in assessing such matters, and an appeal court will not normally interfere with the tribunal's exercise of its judgment in the absence of an act or omission on the part of the tribunal which no reasonable tribunal, properly directing itself on the basis of the overriding objective, would have done/omitted to do, and which amounts to unfair treatment of a litigant.

20. Similar points were made by the Court of Appeal in **Mensah v East Hertfordshire NHS Trust** [1998] IRLR 531 at paragraph 36.

Grounds of Appeal

21. At a rule 3(10) hearing on 6 August 2026, I permitted the Claimant to proceed in relation to ground 2 of her grounds only. That ground argues that the tribunal created a de-facto strike out at a private preliminary hearing by failing to discern the Protected Disclosure claim on the ET1. Specifically, that they erred in (1) considering there was no discernible claim for protected disclosure and (2) the order amounted to a striking out of the claim which should not have taken place at a private preliminary hearing. The third element, that the Employment Tribunal overruled a decision of EJ Whitcome who had permitted the claim to proceed, by virtue of his sending out an agenda that included reference to protected disclosures, was not permitted to proceed. Moreover, there is no appeal in relation to the requirement for the Claimant to make an application to amend her claim to include a claim of unfair dismissal.

22. The Claimant submits that she had raised protected disclosures in both the ET1 paper apart and the extensive documentation that she appended to the paper apart. She has taken me to various paragraphs that she says were claims that extend across a number of different parts of the elements of s.43B(1) **Employment Rights Act 1996**. She pointed to a number of matters that extended beyond her own personal situation and were in the public interest: particularly relating to the broader application of policies within the Respondent University, the treatment of disabled people in the organisation and the need for training of managers in relation to neurodiversity.

23. The Respondent submits that the ET1 does not, on an objective analysis, include a claim of protected disclosure detriment. Rather, the pleading addresses only an **Equality Act** victimisation claim and the reference to protected disclosures at the end of the paper apart is a "happy accident". They submitted that the Claimant's subjective intention was not to bring a protected disclosure claim, evidenced by the reference to her "expanding" her claim to include it. The Respondent rightly conceded that if I found that a protected disclosure claim was made in the ET1, then **Mendy** would apply and it had effectively been struck out by the Tribunal in circumstances where that would amount to an error of law.

24. There are two issues that I must address. Firstly, I note that the Claimant, at the preliminary hearing said that she wanted to "expand" her claim to include the whistleblowing matters. The Claimant is a litigant in person, albeit a highly educated one. Nevertheless, she is not a lawyer and has certain disabilities which may have impacted on her ability to cope in a hearing: as HHJ Tayler observed in **Cox v Adecco and others** (UKEAT/0339/19/AT) "When pushed by a judge to explain the claim, a litigant in person may become like a rabbit in the headlights and fail to explain the case they have set out in writing" (at paragraph 28(7)). Furthermore, the subjective intentions of the parties are not what I am concerned with; the analysis is an objective one.

25. Therefore, in my judgment the second issue is the important point, and that is whether on an objective reading of the ET1 paper apart it is clear that the Claimant was seeking to bring claims of having been subject to a detriment because of protected disclosures. The section after paragraph 97, quoted above, makes that abundantly clear: the Claimant uses the words "protected disclosures", she identifies what they were and sets out the detriments that she alleges flowed from those disclosures. The cross reference to paragraph 70 deals explicitly with a protected disclosure. The Respondent submitted in their skeleton argument that there are no public interest elements in those disclosures. However, it is clear from paragraph 87 of the paper apart that the Claimant was alleging that there were institutional failures in relation to disabled people generally, not limited to **Equality Act** complaints or solely to matters concerning her own situation.

26. Given that the existence of this claim is very clear on the face of the ET1, I do not need to consider the relevance or otherwise of protected disclosures being referred to in the schedule of issues prepared by the Claimant or the agenda document that was produced by the Claimant: in light of the Court of Appeal judgment in **Moustache**, I very much doubt they are relevant. Moreover, whether or not the disclosures amount to protected disclosures is not for me to determine: the issue is simply whether on an objective analysis of the ET1 paper apart, the Claimant was seeking to raise that claim. I do not accept the Respondent's submission that this was simply erroneous wording referring to the victimisation claim.

27. The order of the Tribunal has, as a consequence, effectively struck out this claim in circumstances where there was no public preliminary hearing contrary to the ET Rules: see **Mendy** above. That is an error of law.

28. The Claimant says that constructive unfair dismissal is also evident on the form. However, this is not something that she raised as a ground of appeal: the grounds that were pleaded only addressed protected disclosures, not constructive unfair dismissal.

29. In those circumstances, the appeal is allowed in relation to the direction of the Employment Tribunal for the Claimant to make an application to amend her claim in relation to protected disclosures. I set aside paragraph 12 of the 17 April 2026 order insofar as it relates to protected disclosures. It remains extant in relation to any claim for unfair dismissal that the Claimant seeks to bring. Given that I have set aside the relevant part of the ET's order, this is not a case where I am remitting any matter to the Employment Tribunal. Consequently, my function has come to an end in determining this appeal and setting aside the relevant paragraph of the order; any further steps are thus to be taken by the Tribunal. No other issues are properly before me.