



EMPLOYMENT TRIBUNALS

Claimant: Ms Eva Meszarosova

Respondent: Mr C Thakar (1)
Ms P McCarter (2)
Mr C Nnadi (3)
Oxford University Hospitals NHS Foundation Trust (4)

RECORD OF A PRELIMINARY HEARING

Heard at: Reading (CVP) **On:** 8 October 2026

Before: First Tier Tribunal Judge Davison sitting as an Employment Judge

Appearances

For the claimant: In Person

For all the respondents: Mr G Graham Counsel

JUDGMENT

1. The claimant's application to amend her claim is refused.

Reasons

Background

1. The claim form was presented on 31 May 2025. The claimant is pursuing direct race/sex discrimination and, in the alternative, harassment related to race/sex.
2. There has already been fairly extensive case management. The claimant indicated she wished to apply to amend her claim. On 11 June 2026 EJ Hawsworth made Case Management Orders regarding the hearing and set out the matters needed to be considered at this Public Preliminary Hearing (bundle page 99ff). The complaints and issues were set out in some detail at page 104ff.

Case Management Orders for the onward progression of this matter have been provided separately.

Application to amend

3. In the case of Selkent Bus Company Limited v Moore [1996] ICR 836 the Employment Appeal Tribunal (“EAT”) set out the test to be applied by a Tribunal in deciding whether to exercise its discretion to grant an amendment. It said the Tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. The EAT in Selkent also set out a list of factors which are certainly relevant, which are usually referred to as the “Selkent factors”. In brief they are:
 - (1) The nature of the amendment i.e. whether the amendment sought is one of the minor matters or is a substantive alteration pleading a new cause of action;
 - (2) The applicability of time limits. If a new complaint of cause of action is proposed to be added by way of amendment it is essential for the Tribunal to consider whether that complaint is out of time and if so whether the time limit should be extended; and
 - (3) The timing and manner of the application. An application should not be refused solely because there has been a delay in making it. There are no time limits laid down in the rules for making amendments, but delay is a discretionary factor. It is relevant to consider why the application was not made earlier and why it is now being made (for example the discovery of new facts or new information).
4. In the case of Vaughan v Modality Partnership UKEAT/0147/20/BA the EAT reminded parties and Tribunals that the core test in considering applications to amend is the balance of injustice and hardship in allowing or refusing the application. The exercise starts with the parties making submissions on the specific practical consequences of allowing or refusing the amendment. That balancing exercise is fundamental. The Selkent factors should not be treated as if they are a list to be checked off.
5. The issue of amendment applications was more recently discussed in CX v Secretary of State for Justice [2025] EAT 114.
6. All the above guidance has been considered in assessing this application. Analysis of the practical impact of granting or refusing the application must be undertaken. In determining whether to grant an application to amend, an employment tribunal must always carry out a careful balancing exercise of all the relevant factors, having regard to the interests of justice and to the relative

hardship that would be caused to the parties by granting or refusing the amendment.

7. The hardship and injustice test is a balancing exercise. Lady Smith noted in Trimble and anor v North Lanarkshire Council and anor EATS 0048/12 that it is inevitable that each party will point to there being a downside for them if the proposed amendment is allowed or not allowed.
8. I have considered the original ET 1 claim form and the documents and submissions provided in support of the application to amend.
9. The Presidential Guidance on General Case Management for England and Wales notes the *Selkent* provisions are not intended to be an exhaustive list. There may thus be additional factors to consider in any particular case (Conteh v First Security Guards Ltd EAT 0144/16).
10. In Langstaff J in Chandhok v Tirkey [2015] ICR 527 emphasised the importance of the claim form in setting out a claimant's case:

'16. ...The claim, as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely upon their say so. Instead, it serves not only a useful but a necessary function. It sets out the essential case. It is that to which a Respondent is required to respond. A Respondent is not required to answer a witness statement, nor a document, but the claims made – meaning, under the Rules of Procedure 2013, the claim as set out in the ET1.

17. ...The ET1 and ET3 have an important function in ensuring that a claim is brought, and responded to, within stringent time limits. If a "claim" or a "case" is to be understood as being far wider than that which is set out in the ET1 or ET3, it would be open to a litigant after the expiry of any relevant time limit to assert that the case now put had all along been made, because it was "their case", and in order to argue that the time limit had no application to that case could point to other documents or statements, not contained within the claim form. Such an approach defeats the purpose of permitting or denying amendments; it allows issues to be based on shifting sands; it ultimately denies that which clear-headed justice most needs, which is focus. It is an enemy of identifying, and in the light of the identification resolving, the central issues in dispute.'

11. The reasoning in Chandhok was approved by the Court of Appeal in Moustache v Chelsea and Westminster Hospital NHS Foundation Trust [2025] ICR 1231. At §34:

"...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."

12. In LB Ealing v Peace [2026] EAT 81, HHJ Tayler held that the first instance tribunal had erred in concluding that the respondent would not suffer prejudice because it had advance notice of new allegations in a further and better particulars document. HHJ Tayler held that the tribunal was required to analyse whether there were new complaints that had not been asserted in the claim and, in respect of new allegations, to balance the injustice and hardship of allowing or refusing the amendment.
13. The proposed amendments were summarised in paragraph 11 of the CMOs of 11 June 2026.

'11. The claimant clarified that she wants to add the following three factual matters to her claim as complaints of direct discrimination/harassment because of race/sex and/or victimisation:

11.1 On 7 July 2025 Paul Gale asked the claimant for a chat in which he asked the claimant if she was happy to stay in her current post considering the ongoing internal investigations;

11.2 On 24 July 2025 Paul Gale contacted the claimant again and asked her for another meeting at which he told her that he was just passing a message on to her (and made it clear that this was not his decision) that 'higher powers' had decided that from Monday 28 August 2025, she was to be moved to a non-descript and different role elsewhere in the trust, without any discussion;

11.3 On 13 October 2025 upon highlighting the written staff recognition awards which the claimant had received from the director of my department and from an administrator in my admin team, the Chair of the Appeals hearing commented 'even bad managers receive good references'.'

14. The claimant accepted that paragraph 11.1 was not a 'claim' that was being advanced. But rather background evidence to her claim of harassment, or should it be admitted background evidence to her claim of victimisation.
15. In LB Ealing & Others v Pauline Peace [2026] EAT 81 it was held:

'32. Unfortunately, the analysis of the Employment Tribunal was wholly inadequate, the appeal must be allowed. The Employment Judge concluded that because the respondents had advance notice of the matters in the document misleadingly titled "Particulars of Claim" (which I will refer to as the additional particulars), they would not suffer any prejudice because there would be time to respond. There was no real analysis of whether there were new complaints that had not been asserted in the claim form and which could only be introduced by way of amendment. In respect of complaints that would require an amendment, the Employment Judge was required to balance the injustice or hardship which might be caused to the parties were the amendment allowed or refused and, so far as relevant, consider the nature of the amendment, applicability of time limits and the timing and manner of the application.'

16. The ET1 does not raise victimisation. The claimant appears to suggest this is a simple relabelling exercise as she wishes to rely on the same facts in her discrimination and harassment claims to support the claim of victimisation. This is not accurate. The victimisation claims advanced and set out by EJ Hawksworth all post date the ET1. Further, the legal test for victimisation is different and requires a different analysis. The claimant states the victimisation arose on 24 July 2025, yet the application for amendment was made on 8 October 2026, at best it was raised or an indication was given it would be considered on 11 June 2026. The application is out of time, this is a factor for consideration.
17. Further, the claim set out at paragraph 11.2 references that the claimant was to be moved to a different role. This did not happen and so there was no victimisation as alleged, the claimant suffered no detriment. There is therefore no prejudice to the claimant in refusing to amend a claim with no prospects of success. Finally, even if the comment in 11.3 were made, it is a factual statement. There was again no detriment to the claimant and no prejudice is caused in refusing the amendment.
18. EJ Hawksworth had determined that the claim for victimisation required an application to amend. It was not therefore plain and obvious from the pleaded case. The claimant already has wide ranging claims against the respondent.
19. I find to refuse the application to amend causes no real prejudice to the claimant. The balance of prejudice falls against the respondent. There is no good explanation as to why the claims now pleaded were not raised at an earlier stage. From the guidance above it is clear my focus should be on the ET1, the matters originally pleaded and the claims now advanced. I find the arguments advanced are exactly the type of 'shifting sands' arguments that Chandok precludes.
20. The application to amend is of a significant nature. The claimant seeks to raise a new claim of victimisation and some of the facts pleaded post date the ET1. The respondent indicated a further 2 potential witnesses would have to be called to address this expansion of the claims.
21. Allowing the application would put the respondents to additional cost, both in amending their response and in attending what would likely be a lengthier final hearing. Whilst some of that prejudice might reasonably be mitigated by a costs order, the claimant is of limited funds as reflected in the Deposit Orders.
22. The victimisation allegations are not referenced specifically in the claimant's ET1. The respondent was therefore prevented from investigating the allegations contemporaneously, or indeed until at the earliest when further particulars were proffered. That delay will inevitably impact on the level of detail and cogency of the evidence the respondent can be expected to give in respect of those allegations.
23. I consider that allowing the amendment would place the respondent at a significant prejudice.

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24. By contrast, I do not consider that there is any significant prejudice to the claimant in refusing the application. The claimant already has extensive allegations of before the Tribunal.
25. Taking all relevant factors into account, and balancing the likely prejudice caused to each party by allowing or refusing the application, I refused it.

Approved by:

**First Tier Tribunal Judge
Davison sitting as an
Employment Judge**

8 October 2026

Sent to the parties on:

12 October 2026

For the Tribunal Office