EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001199/2025 Preliminary Hearing in Chambers on 30 September 2026

Employment Judge: M A Macleod

A Girgin	**Claimant** **In Person**
Leeds Building Society	**Respondent** **Represented by** **Mr R Jespersen** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claimant's application to amend her claim dated 30 July 2026 is refused.

REASONS

1. The claimant presented a formal application to amend her claim on 30 July 2026, to add a claim of disability discrimination, and in particular a complaint that the respondent failed under section 20/21 of the Equality Act 2010 to make reasonable adjustments in relation to disability.

2. The respondent opposed that application.

3. It was directed by the Tribunal that that application, and the respondent's objections, should be determined at a Chambers Hearing by the Tribunal following written submissions.

4. The matter was allocated to me. I note that a Hearing has been listed to commence on 12 October 2026, and therefore that this application requires to be determined urgently. Owing to other commitments it has not been possible to address this matter until now, and accordingly this decision is

commensurately brief in order to provide certain to the parties in the case prior to the commencement of the Hearing.

5. I do not, therefore, propose to set out the parties' submissions at length, but to address them in the decision which I have reached below.

Decision

6. An application to amend a claim must be determined by the Tribunal according to the interests of justice. In doing so, I have had regard to the useful formulation of the types of amendment which are typically put forward by parties in Tribunal proceedings in *Harvey in Industrial Relations and Employment Law,* Division T at paragraph 311.03:

> **"A distinction may be drawn between (i) amendments which are merely designed to alter the basis of an existing claim, but without purporting to raise a new distinct head of complaint; (ii) amendments which add or substitute a new cause of action but one which is linked to, or arises out of the same facts as, the original claim; and (iii) amendments which add or substitute a wholly new claim or cause of action which is not connected to the original claim at all."**

7. I also take account, as did the parties in their submissions, of the important authority in this area is **Selkent Bus Co Ltd v Moore** 1996 ICR 836. At p.843, Mummery J, as he then was, said:

> *"(4) Whenever the discretion to grant an amendment is invoked, 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.*
>
> *(5) What are the relevant circumstances? It is impossible and undesirable to attempt to list them exhaustively, but the following are certainly relevant.*
>
> *(a) The nature of the amendment. Applications to amend are of many different kinds, ranging, on the one hand, from the correction of clerical and typing errors, the addition of factual details to existing allegations and the addition or substitution of other labels for facts already pleaded to, on the other hand, the making of entirely new factual allegations which change the basis of the existing claim. The tribunal have to decide whether the amendment sought is one of the minor matters or is a substantial alteration pleading a new cause of action.*

(b) The applicability of time limits. If a new complaint or 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 under the applicable statutory provisions, e.g. in the case of unfair dismissal, section 67 of the Employment Protection (Consolidation) Act 1978.

(c) 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 Regulations of 1993 for the making of amendments. The amendments may be made at any time – before, at, even after the hearing of the case. Delay in making the application is, however, 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 appearing from documents disclosed on discovery. Whenever taking any factors into account, the paramount considerations are the relative injustice and hardship involved in refusing or granting an amendment. Questions of delay, as a result of adjournments, and additional costs, particularly if they are unlikely to be recovered by the successful party, are relevant in reaching a decision".

8. In the well-known decision of **Chandhok v Tirkey UKEAT.0190/14/KN**, the Employment Appeal Tribunal (The Honourable Mr Justice Langstaff) stated:

"17. I readily accept that Tribunals should provide straightforward, accessible and readily understandable fora in which disputes can be resolved speedily, effectively and with a minimum of complication. They were not at the outset designed to be populated by lawyers, and the fact that law now features so prominently before Employment Tribunals does not mean that those origins should be dismissed as of little value. Care must be taken to avoid such undue formalism as prevents a Tribunal getting to grips with those issues which really divide the parties. However, all that said, the starting point is that the parties must set out the essence of their respective cases on paper in respectively the ET1 and the answer to it. If it were not so, then there would be no obvious principle by which reference to any further document (witness statement, or the like) could be restricted. Such restriction is needed to keep litigation within sensible bounds, and to ensure that a degree of informality does not become unbridled licence. 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.

18. In summary, a system of justice involves more than allowing parties at any time to raise the case which best seems to suit the moment from their perspective. It requires each party to know in essence what the other is saying, so they can properly meet it; so that they can tell if a Tribunal may have lost jurisdiction on time grounds; so that the costs incurred can be kept to those which are proportionate; so that the time needed for a case, and the expenditure which goes hand in hand with it, can be provided for both by the parties and by the Tribunal itself, and enable care to be taken that any one case does not deprive others of their fair share of the resources of the system. It should provide for focus on the central issues. That is why there is a system of claim and response, and why an Employment Tribunal should take very great care not to be diverted into thinking that the essential case is to be found elsewhere than in the pleadings."

9. In this case, the claim was presented by the claimant on 13 May 2025. In the ET1, which she completed herself, she ticked the box identifying a claim of race discrimination, but did not tick the box next to disability discrimination.

10. No facts were pled in the paper apart to the ET1 to identify a claim of disability discrimination. The thrust of the claim was related to the claimant's race and to her treatment by the respondent on that ground.

11. In the agenda prepared for the first Preliminary Hearing in this case, provided on 23 June 2025, the claimant stated "I do not consider myself disabled, but I had a patella operation as a child". She referred to Schedule 2 of the agenda. Looking at Schedule 2, she did not assert that she had a physical or mental impairment in D1; she provided no details as to the substantial and adverse long-term effect on her ability to carry out normal day-to-day activities of such a condition; and she provided no medical details in support.

12. In D4, when asked if the respondent could be reasonably expected to know that she was disabled, she replied that "I do not know if a Doctor would qualify me as disabled or not", but referred again to a childhood operation to her leg. She then stated "Despite asking on several occasions for my working position (including my chair - to be adjusted – as it was causing me a lot of pain – my manager ignored my requests. Instead she bullied me, implying that if I refused to sit where she wanted me to sit it would equate to my being unable to carry out my job…Even though she knew I was in pain, there was no offer made to adjust my working position to alleviate my pain…"

13. In D6, she set out a PCP, and an alleged substantial disadvantage, and what she considered to be reasonable adjustments to alleviate that disadvantage.

14. On 11 December 2025, a Preliminary Hearing took place before Employment Judge Sorrell. The claimant was represented by a solicitor at that Hearing. The claims were noted in paragraph 2 of the Note, without reference to disability discrimination. No reference was made to the possibility that the claimant was seeking or may seek to apply to amend her claim to introduce such a claim.

15. On 20 April 2026, a further Preliminary Hearing took place before Employment Judge Jones. The claimant appeared on her own behalf at that Hearing, and was not represented.

16. No application was made or foreshadowed by the claimant at that Hearing, in the Note which followed it. There was considerable discussion, it was noted, about the terms of a List of Issues in the case, and no reference was made to disability discrimination in that discussion. The claimant was provided with time, 7 days, to provide further particulars of her claim of direct discrimination.

17. In providing further particulars, the claimant indicated her wish to include a claim of disability discrimination, namely that the respondent had failed to make reasonable adjustments in respect of disability.

18. I considered, therefore, whether or not it would be in the interests of justice to grant the claimant's application to amend dated 30 July 2026.

19. In the first place, the claimant maintains that she is simply relying upon a factual matrix already presented to the Tribunal, and that she is simply re-labelling her existing claim.

20. In my view, this assertion is not correct, and represents a misunderstanding of the nature of pleadings in the Employment Tribunal. The claimant did make reference, as set out above, to a disability discrimination claim in her agenda to the first Preliminary Hearing (which was, in fact, postponed). An agenda is not a formal part of the pleadings, but an administrative document seeking to have parties clarify and structure the claims and defences which have been made in the ET1 and ET3. Until an amendment application is permitted, the facts set out in the agenda cannot be said to form part of the factual matrix in the pleadings.

21. The ET1 contains no reference to a specific complaint that the claimant was required to sit in a particular place, or that that had an impact upon any medical condition which she alleges she experiences.

22. In the second place, the agenda did not identify or set out a claim for disability discrimination, in any event. The claimant expressly stated that she did not consider herself to be disabled. I return to this below, but it means that the claimant herself flatly contradicted her stated intention to make such a claim. To suggest now that that was the basis of such a claim is, in my view, quite disingenuous.

23. I turned, then, to review the principles set out in **Selkent** in order to determine the matter.

24. Firstly, I considered the nature of the amendment. I do not accept, as I have already said, that this amounts to a re-labelling of facts already pled. The respondent has acknowledged that the claimant may have given an indication in her agenda of her intention to make such a claim, but that is no more than an understanding that that was what the claimant was foreshadowing in her agenda. It has not formal standing in the pleadings, and the respondent was entitled to await the formal application to amend before setting forth their objections to it.

25. In my judgment, this is a significant amendment, particularly at this late stage of the proceedings. The claimant is seeking to add a new head of claim – there was no disability discrimination claim noted or even hinted at in the ET1 – based on new facts. Those facts relate to the alleged instructions as to where she could or could not sit, but also to the condition which she is now seeking to rely upon. In the agenda she made reference to a childhood operation, which is a very brief description without any detail as to the nature of the condition or any diagnosis upon which the claimant would seek to rely. Even now, she has provided no details of the nature of the condition, and the agenda itself, which she is relying heavily upon, says nothing of any substance about this.

26. Indeed, the application to amend is new in that it now asserts that the claimant was a disabled person at the material time, contrary to her own statement that she did not consider herself disabled in the agenda.

27. The amendment is also significant in that it would require considerable further investigation, not only into the factual allegations themselves but into the claimant's assertion of disability status. She would require to provide evidence, in the form of a disability impact statement together with medical records and possibly a medical report, which would allow the Tribunal to consider and determine whether or not her condition amounted to a disability at the material time. She has not, so far as she states in her application, done any of this. As I will explain below, the impact on the respondent, and potentially on the proceedings, would be significant.

28. The applicability of time limits is significant, in my view. The claim is said by the respondent to have been presented out of time, and therefore the application, having been presented some 14 months after the claim itself was presented, and within 3 months of the final Hearing, comes very late in the process. The claimant's explanation for this is apparently that she was unaware of the legalities of the process as a litigant in person, but of course she was represented for at least some of the period prior to her application, and took no steps, either personally or through her solicitor, to raise a claim for disability discrimination prior to her application.

29. The timing and manner of the application are also significant. It is appreciated that the parties sought to bring some urgency to this matter, and the respondent proposed a Preliminary Hearing to determine the issue, but it has not proved possible to do so. If the application were allowed, that would probably, in my view, lead to the inevitable postponement of the final Hearing on the basis that further investigation would be required into the claimant's assertion that she is a disabled person, as well as the specific allegations made.

30. The claimant repeatedly asserts that the respondent has been well aware of this situation relating to her seating arrangements for some time. That may well be so, but they have not been put on notice that such a situation forms part of the factual matrix of the claims which they are expected to defend. That has implications for their preparations for this Hearing.

31. It is appreciated that the application was submitted on 30 July, but time requires to be taken in order to determine the appropriate procedure to be followed to deal with it.

32. Further, it is entirely unclear why the claimant did not present the claim in the ET1 or at least when the two Preliminary Hearings were taking place. The fact that she is now unrepresented, and was when she submitted the ET1, is of little significance given that she has had the benefit of legal advice during the case. She asserts confidently that this is not determinative but it is a relevant factor to be considered.

33. The facts which she now relies upon must have been known to her when she submitted her ET1, and during the Preliminary Hearings, and also while she was being legally represented.

34. As to the question of prejudice, the claimant seeks to dismiss any prejudice potentially suffered by the respondent, but in my judgment the prejudice to the respondent would be significant, for the reasons set out above, namely that they would require to convene further investigations, may have to seek postponement of the final Hearing and incur further expense and delay in

the proceedings. The claimant will suffer little prejudice. She has, until relatively recently, shown no particular inclination to raise a disability discrimination claim, and has focused upon her existing claims. A List of Issues has been worked upon and concluded, and there is no good reason to disrupt that List of Issues at this late stage. In any event, the claimant has those claims to proceed with to final Hearing.

35. The Tribunal has to take all of these matters into account when determining whether or not such an application to amend should be granted. A party is not entitled to expect that any addition to their claim will simply be allowed (see **Chandok**), and it is a matter for the Tribunal to decide based on the factors set out above.

36. For these reasons, it is my judgment that the application to amend submitted by the claimant on 30 July 2026 should be refused.

12-10-2026