EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000917/2026

Open Preliminary Hearing Held in Glasgow by CVP on 17 August 2026

Employment Judge J Hendry

Ms J E Roberts	**Claimant** **Represented by:** **Mr M Hemsi,** **Solicitor**
Epilepsy Action Scotland	**Respondent** **Represented by:** **Mr M Briggs,** **Advocate**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the claimant's application to amend is refused.

REASONS

1. The claimant lodged an ET1 on the 20 April 2026 claiming constructive unfair dismissal. The claim was opposed.

2. On 6 May 2026 the claimant's newly instructed solicitors intimated that they intended seeking permission to amend the claim to add claims for harassment related to disability under Section 26 of the Equality Act 2010.

3. There was correspondence with the Employment Tribunal relating to the form of the amendment which was initially lodged as a Scott Schedule. Parties

accepted that the amendment to be considered was put in its final form in June (JBp67-72).

4. At the outset of the hearing Mr Hemsi indicated that he would lead evidence from the claimant around the circumstances around her lodging the ET1 and her instruction of solicitors shortly thereafter. Both parties had lodged Skeleton Submissions and a Joint Bundle for use at the hearing.

5. Disability status remained unresolved at the date of the hearing.

6. The following significant dates were agreed:

   a) Date of termination of employment – 25 November 2025.
   b) Date of ACAS conciliation 9 January – 24 March 2026.
   c) Lodging of ET1 – 20 April 2026.
   d) Date on intimation of intention to amend 6 May 2026.

7. The amendment (JBp67-72) contained reference to 17 separate incidents of alleged harassment.

8. There was no dispute about the date or content of documents lodged. Mrs Roberts (whose evidence I will summarise) spoke to the history of the matter. She believed that she had been micro-managed and treated badly by her senior managers citing particularly the behaviour of her line manager Ms McManus and the Chief Executive Officer Ms Lesslie Young. She explained that she had been presented with a PIP on the 19 June 2025. This had a devasting impact on her. She says she had no warning of it and that it was unjustified. She lodged a grievance through her Trade Union representative Mr Mullen on the 6 August 2025 (JBp164).

9. The first heading in the grievance was titled: **Inappropriate Behaviour and Bullying**. In that grievance the claimant complained of ‘‘persistent micromanagement and unfair criticism’’ and that she was frequently ‘‘berated’’.

10. The matter progressed to a grievance hearing on the 27 August which was minuted (JBp50). The employers carried out an investigation including meeting the claimant on the 3 September to discuss her grievance.

11. The claimant attended Occupational Health. She had left work on the 19 June and been signed off sick from that date.

12. The grievance was rejected on the 23 September 2025 (JBp219). The claimant appealed and this appeal was rejected following a meeting on the 21 November (JBp266-273).

13. The claimant resigned.

14. The claimant was hopeful that she would be supported in any employment tribunal claim by her Trade Union. The claim envisaged (and discussed with her TU representative) was for constructive dismissal. She was advised by her Trade Union representative that the matter was being referred by the Union to their solicitors for assessment of its prospects. She was told on the 3 April that they would not support the claim as there was insufficient prospects of success. The claimant challenged the decision on the 17 April and received a final negative response on the 23 April (JBp279-286).

15. The claimant remained unwell during this period. She decided to try and get legal advice but this proved time consuming as she had to contact legal firms who might then take a few days to respond to her with an answer as to whether they could act. All the firms contacted told her that they could not act. A solicitor that she spoke to suggested that she lodge the claim herself which she duly did as she was running out of time. After she had lodged proceedings she was able to instruct Mr Hemsi's firm to act for her.

16. Mr Hemsi met the claimant quickly and intimated an intention to add claims for harassment under Section 26 of the Equality Act 2010 on the 6 May.

Observations on Evidence

17. I found the claimant to be a clear and careful witness. The period of time around the lodging of the claim was stressful and fraught for her. She was 'not herself'. She is an able and intelligent person. She had hoped that the Trade Union solicitors would act for her. She was not a lawyer and had no experience of such matters.

18. The claimant was also wholly candid in her evidence accepting that she did not consider the statutory delict of discriminatory harassment when raising the grievance or later in her ET claim. She had used the word harassment (along with bullying) in the grievance correspondence in the everyday sense of being subjected to repeated incidents of what she regarded as being bad behaviour on the part of her senior line managers. She now knew that she could pursue claims for harassment related to her condition.

19. **Both Mr Hemsi and Mr Briggs adopted their Skeleton Arguments lodged in advance of the hearing.**

Claimant's Submissions

20. Mr Hemsi added to the written submissions. He made reference to the various authorities mentioned there and the principles underlining amendment. In particular he made reference to the case of ***Ali v Office for National Statistics*** [2005] IRLR 201 and the guidance that amendment should be looked on

favourably where the amendment was very closely related to the other allegations. The respondents could not deny that the claimant had raised these various matters in her grievance and in her grievance appeal there would be no prejudice to the respondent as these claims formed part of her unfair dismissal claim and the various incidents would have to be discussed in that context. There was, he suggested a considerable prejudice to the claimant if not allowed to proceed with these statutory claims. He carefully took the tribunal through the background mentioning the relevant dates starting with the date of termination of employment on 25 November 2025, the claimant contacting ACAS on 9 January 2026 and the claim finally being lodged on the 23 of April. He noted that the respondent had viewed their Equal Opportunities policy when considering the grievance they must have been alert to the fact that the claimant as a disabled person required to be treated in accordance with the various protections she had under the Equality Act.

21. In his detailed submissions the solicitor took the tribunal through the background to the case starting with the launching of the claim and the history of the claimant's engagement with her Trade Union representative and their solicitors. She had been unwell and had little time to lodge proceedings which she did herself. She was not a lawyer and did not realise that separate claims relating to the bullying could be made. His primary position was that the amendment added detail to a pre-existing claim for harassment. He referred the tribunal to the terms of the ET1 and to the references there to bullying and harassment. He made reference to the earlier grievance process and to the claimant's characterisation of her senior line manager's behaviour as bullying and harassment. His submission was that the respondent could not deny that they had been put on notice that the claimant was objecting to such behaviour.

Respondent's Position

22. Mr Briggs first of all asked the tribunal to consider the detailed written skeleton argument lodged before the hearing before making relatively short oral submissions. Mr Briggs suggested that the claimant's own evidence did not assist her. He did not criticise her actions. She was not a solicitor. It was notable that the claimant had not made reference to discrimination in her grievance or in her appeal. There was, he said, nothing in her papers that suggested that she thought her disability was a factor in her treatment other than it may have had greater impact on her than it would have had on someone not suffering from anxiety/depression nor would her employers have been alerted to the possibility of such a claim. The claimant had made no reference to discrimination in her ET1.

23. The various incidents in the amendment covered a lengthy period of time and were time barred. He could not argue that there was not a potential common

thread between the incidents as they all involved her senior managers, nevertheless, the tribunal should look carefully at the terms of the amendment. In Counsel's submission the various events narrated do not show how the behaviour was related to her condition. A distinction should be drawn between behaviour related to her condition and behaviour which has an impact on her because of that condition.

24. Counsel made reference to the terms of section 26 of the Equality Act and in particular to the fact that there has to be behaviour that was reasonably likely to have the effect objected to. He pointed out that she had the assistance of a skilled and experienced Trade Union official. She had not raised disability discrimination in her grievance. There was no indication that a claim for discrimination was ''on the cards''. In his submission there was no doubt that this was an amendment not an elaboration of an existing claim. There was clear prejudice to the respondent. It would make any hearing more complex and time consuming with further complex legal issues to consider. It could not be said that the unfair dismissal claim would require the incidents to be examined as the claimant's position was that she had resigned because the respondent had not given her access to the evidence used at the grievance stage and had not considered the evidence at either the grievance or appeal stage with an open mind. There would in his view be no need to consider the various incidents as part of an erosion of trust and confidence argument.

25. Mr Hemsi briefly responded that Counsel had overlooked the terms of the appeal (p233) where the claimant wrote:

'' ….most of my colleagues support me and my recollection of event. Based on what they perceive to be entirely unfair treatment of me, mismanagement of the grievance process, coupled with wider issues (including events that could constitute discrimination or even assault), they have formally lodged their lack of confidence in the current senior management.''

26. Mr Briggs concluded by arguing that the application seeks to introduce a new cause of action which is not foreshadowed in the ET1 and requires entirely new lines of inquiry in relation to disability status, knowledge, whether conduct can be said to relate to disability, whether it had the prescribed effect, and whether it was reasonable for it to have that effect. It is not, as suggested by the claimant, a "*relabelling*" exercise.

27. Finally, he observed that if these matters had been raised as a new claim it would be materially out of time, the last alleged act of harassment being 24 November 2025 and the application to amend having been made on 6 May 2026. The primary time limit was 24 February 2026. There was nothing to support any just and equitable extension.

Discussion and Decision

28. The first question is whether amendment is required. The ET1 lodged by the claimant makes no reference to discrimination or disability discrimination. This was not the claim made and presumably not the claim discussed with her Trade Union Official. The claim follows her grievance complaining of ‘‘bullying and harassment, unfair performance management and failure in duty of care’’. At part 8 of the form the claimant did not ‘tick’ the section relating to discrimination, neither is it mentioned by her in the section relating to compensation nor does she advise the Tribunal that she has a disability that might require adjustments. The incidents she now seeks to rely on are not articulated in the ET1. While accepting a certain latitude must be given to party litigants who draft their own pleadings there is nothing to suggest disability discrimination is being advanced in the ET1. Any claim for harassment under section 26 of the Equality Act 2010 is also out of time. In all these circumstances I have no doubt that this must be treated as an amendment.

29. The law on amendment is a well-trodden path but nonetheless it can sometimes be difficult to apply in practice. The common factors that a Tribunal has to deal with are set out in the case of ***Selkent Bus Co Ltd v Moore*** [1996] ICR 836. In ***Selkent***, Mummery J stressed that this overall assessment involves consideration of all of the relevant factors and stated that it is impossible and undesirable to attempt to list them exhaustively. He noted a number of factors that will generally be relevant to the assessment: the nature of the amendment, the applicability of time limits and the timing and manner of the application. Those factors are not a checklist to be ticked off (***Abercrombie v Aga Rangemaster Ltd*** [2014] ICR 209) The paramount importance is to balance the injustice and/or hardship caused by allowing or refusing the amendment and has been emphasised repeatedly (***Vaughan v Modality Partnership*** [2021] ICR 535). It goes without saying that the Tribunal must be even handed in its approach and consider both sides’ positions.

30. The case of ***Kumari v Greater Manchester Mental Health NHS Foundation Trust*** is authority for the proposition that a tribunal can weigh an assessment of a claim's potential weakness when deciding whether to grant an amendment (or extend time on a "just and equitable" basis).

31. The respondent argued that it would not be just and equitable to extend time. They point to the claimant having the assistance of a legally qualified, experienced, senior UNISON trade union official who gave advice throughout the internal processes from June 2025 to April 2026 during which disability related harassment was not alleged. She had apparently not raised this new claim of discrimination with her Trade Union solicitors or brought it to their attention.

32. Mr Briggs pointed out that the respondent was never asked to investigate the question at the time. Reference is made to ***Richmond Pharmacology v Dhaliwal*** [2009] IRLR 336 EAT which supports the proposition that harassment is not established by an employee's subjective perception alone. The respondent's position was that the pleaded acts are a series of discrete management and procedural complaints over 15 months, different processes, and different contexts. He candidly accepted that given her position she could perhaps argue some connection between these events as being micro management by senior managers. However, it was insufficient for the claimant to simply believe that the circumstances of her employment or the employer's actions generally were harassing; there must be evidence that the specific conduct by the employer meets the statutory criteria. The respondent directed the tribunal to ***Carozzi v University of Hertfordshire*** [2024] EAT 169.

33. The tribunal's attention was also drawn to the case of ***Canary Wharf Management Ltd v Edebi*** [2006] UKEAT/0708/05. Mr Briggs observed, as e in the case cited, the claimant has failed to mention disability or raise the issue during internal processes and as such, the employer was not, and has never been, on notice of a disability discrimination issue making it difficult we would suggest, to establish a claim under the Equality Act 2010.

34. I also noted that a tribunal must give *"considerable weight"* to the applicability of time limits and the requirement to bring the new claim within the appropriate time limit. (***Gillet v Bridge 86 Ltd*** EAT 0051/17).

35. In order to succeed in a claim for harassment a claimant has to identify the various elements contained in section 26. She has to show not just the unwanted conduct but say why it is related to her disability. I accept that this is materially different from whether the claimant felt bullied, unsupported, unfairly performance managed, or constructively dismissed. A workplace act does not become disability-related harassment merely because it had an adverse effect on a disabled employee.

36. Mr Hemsi properly pointed to the terms of the appeal. This says that her colleagues (but apparently not the claimant) thought that the employer's actions ''could constitute discrimination''. We know that words like harassment and discrimination are used commonly in what could be described as a non-technical or legal sense. Leaving aside the fact that we do not know whether her colleagues were using the word discrimination in the sense of disability discrimination the point is that despite that suggestion the claimant did not appear to hold the same view or at least did not express it.

37. In the whole circumstances here the factors against allowing the amendment are substantial. To allow it would be to allow a weak claim with patent difficulties to proceed, one that was out of time for no apparently good reason

which would complicate the current claim adding to expense. The balance of hardship clearly favours the respondents. The claimant suffers less prejudice. She will be able to ventilate these events in the course of her unfair dismissal claim. The amendment is accordingly refused for these reasons.

Date sent to Parties **21 October 2026**