

The principles relevant to amendment applications: restating the core concepts

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[London Borough of Ealing & Ors. v Pauline Peace \[2026\] EAT 81](#)

Introduction

1. The EAT considers the principles relevant to amendment applications, restating the core concepts.

Background to the Appeal

2. Mrs Pearce, a litigant in person, described her complaints in box 8.2 of her claim form. This description ran to 10 fairly brief paragraphs. At Box 15, she went on to assert 16 different legal claims and remedies which were not linked to the narrative.
3. The Respondent denied all claims but noted the lack of particulars provided.
4. The case was considered at a preliminary hearing where the Employment Judge agreed that the claim lacked detail and ordered the provision of further and better particulars. An agreed list of issues was also directed.
5. Having received so said further particulars, the Respondent produced a draft list of issues. In doing so, they highlighted sections of that draft that were new assertions, and which it said required an amendment application.
6. Further versions were produced, with the Respondent maintaining that an amendment was required. If permission were granted, however, the Respondent anticipated that the final list of issues could, in due course, form part of the pleaded case and identify the claims being advanced.

7. It seems that this process took some months, and the unagreed list of issues was rehearsed before a different Employment Judge, at which the Respondent's position on amendment was noted.
8. Despite the assertions, the tribunal determined that as the Respondent had had some notice of what was being added in, there was '*nothing before [it] to suggest that the Respondents would be prejudiced by these new particulars*'. On that basis, the tribunal decided that the original claim form and the new particulars covered all the claims being made.
9. Unsurprisingly, the Respondent appealed, noting that the Tribunal had not correctly applied the balance of hardship and injustice test, and failed to take account of relevant circumstances.
10. The appeal was considered by HHJ Tayler sitting alone.

Relevant law

11. In reaching his decision, HHJ Taylor took time to discuss the key principles from leading and well-known authorities covering both the nature of pleadings, and amendments thereto.
12. This discussion noted the challenges which are faced when litigants in person present discursive claims which lack particularity. Those challenges include being able to identify where a claim is pleaded.
13. However, the decision restates the proposition that the claim form is where the claim is to be found, as established in **Chandhok v Tirkey** [2015] ICR 527 at paragraphs 16 -18. That decision confirms that the claim is not something which is used to get the ball rolling but sets out the essential case. Allowing the claim to be informed by other documents added later defeats the purpose of the amendment process and undermines focus.
14. **Chandhok** was approved in **Moustache v Chelsea and Westminster Hospital NHS Foundation Trust** [2025] EWCA Civ 185, [2025] ICR 1231. **Moustache** highlights that in drafting the list of issues attention, should be paid to the pleadings, not other documents.
15. The role of the tribunal is to identify complaints that have been brought either in the original claim form or by way of amendment rather than those which might have been brought. Importantly the list of issues is a case management tool, not a pleading.

16. While the list of issues may *limit* the matters to be discussed, it cannot extend to consider matters not contained in the pleadings, as any addition to those would require amendment: **Remploy Ltd v Abbott UKEAT/0405/14/DM (EAT, unreported)**.
17. Paragraphs 4 to 14 of **Vaughan v Modality Partnership** [2021] ICR 535 are recounted. These cover both approval of the approach to amendment, and the approach to appeals.
18. **Selkent Bus Co Ltd v Moore** [1996] ICR 836 is not left out of the analysis, with a helpful restatement of the factors to be considered when deciding whether or not to allow permission to amend –

“(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.*

*(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 for the making of amendments. 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.

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.”
[emphasis added]”

Discussion and outcome

19. HHJ Tayler refers to the tribunal’s decision as ‘wholly inadequate’ in light of his careful restatement of the law.
20. On that basis the appeal was allowed. The notice that the Respondent had had of the new detail, and the apparent lack of prejudice were not the only factors to be considered.
21. Paragraph 33 of the decision distils into 6 succinct points what a tribunal should consider (even if briefly) –

“1) was the allegation contained in the original claim form

2) if not, was it in the later additional particulars, or was it asserted orally at the hearing

3) what is the nature of the amendment, particularly, does it assert a new complaint

4) if the allegation was not in the original claim form, why not – i.e. what is the explanation for the timing of the application to amend

5) whether the allegation adds a complaint that would be out of time (which may involve consideration of whether it may be part of an act continuing over a period) and if so whether there is a good reason why the amendment should be permitted notwithstanding the time point

6) finally, and fundamentally, the balance of injustice or hardship to the parties if the amendment is allowed or refused.”

22. Remitting the matter back to a different Employment Judge, HHJ Tayler set out useful signposts to assist the claimant address the amendment issue upon remission at paragraphs 34 and 35 of his decision. These included suggestions that the Claimant –

- Focus on core complaints;
- Be ready to address the facets of the test that will need to be considered, including time limits;
- Be prepared to abandon complaints which are illogical, *‘or expect short shrift when the amendment application is considered’*.

Comment

23. The decision is a helpful and timely reminder of the principles that should be addressed in considering changes to pleaded cases. The decision restates the correct approach, which expects a proper consideration of the matters set out in **Selkent Bus**, as approved by HHJ Tayler when he determined **Vaughan**. Notably, the Respondent having some notice is not a substitute for full consideration of an amendment application.

24. The guidance intended for the Claimant in the proceedings upon remission which appears at paragraphs 34 and 35 may be of use to other litigants in person.

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26 June 2026



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