



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss M Clark

**Respondent:** Havens Hospice

## RECORD OF A PRELIMINARY HEARING

**Heard at:** East London Hearing Centre (in private by telephone)

**On:** Monday 5 October 2020

**Before:** Employment Judge A. Ross (sitting alone)

### Appearances

For the Claimant: No appearance

For the Respondent: Mr. Hornsby, Solicitor

## JUDGMENT

**The Claim is struck out.**

## REASONS

1. The Claim was listed for a Preliminary Hearing for case management purposes today. In accordance with the Presidential Guidance on the conduct of proceedings during the Covid-19 pandemic, this hearing was listed as a telephone hearing.

2. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was Audio. A face to face hearing was not held because it was not practicable, no-one requested the same and all issues could be determined in a remote hearing. The documents that I was referred to are as follows: the Claim; the ET3 Response; the application to strike out and the correspondence from the Tribunal. The order made is described at the end of these reasons.

**Strike out application**

3. The complaint of unfair dismissal was struck out for lack of qualifying service.
4. On 31 July 2020, the Respondent applied to strike out the remaining complaints of unlawful deduction from wages and disability discrimination. Mr. Hornsby made the application again orally today. The Claimant did not attend the hearing, and a telephone enquiry was made on the number provided by her Claim; this went through to voicemail.
5. In my oral judgment, I struck out the remainder of the Claim under rule 47 and/or rule 37(1)(c) of the Rules of Procedure 2013 for the following reasons.
6. On 25 April 2020, the Claimant was ordered to provide further particulars of her disability discrimination .
7. On 2 June 2020, the Claimant failed to attend the earlier Telephone Preliminary Hearing Closed and it proceeded in her absence with Employment Judge Lewis making case management directions, including that the Claimant provide further particulars of Disability and disability discrimination complaints.
8. The Claimant failed to provide any particulars or any response at all; a generous time had been allowed (to 30 July 2020).
9. On 31 July 2020, the Respondent applied to strike out for the Claimant's lack of compliance and failure to engage. She made no response to the application and no objection to it.
10. From the Tribunal file, there is no evidence that the Claimant has engaged with process of pursuing her Claim at all since January 2020 when she sent an email to the Tribunal.
11. The Claimant failed to attend this Preliminary Hearing today. A Notice of Hearing was properly sent out. No explanation has been provided for her non-attendance. Enquiries have been made at about 10.06am in the way of phone call by the clerk to the number held for the Claimant.
12. This is the Claimant's case. In respect of her discrimination complaints, the burden of proof is on her to prove the facts which shift the burden of proof to the Respondent. The Claimant cannot do that without setting out her case.
13. Moreover, It is not possible to have a fair hearing unless the Claimant provides the Further Information requested, because without it, the Respondent will not know the case against it.
14. Further, the Tribunal cannot list the case appropriately for final hearing in terms of time estimate or mode of hearing, which is unjust to other Tribunal users waiting for their hearing if this causes delay or adjournment.

15. I am satisfied that, for all the above reasons, this is an appropriate case to strike out under rule 37(1)(c) or to dismiss under rule 47 having considered the enquiries made and all the information on the file, which point to non-engagement by the Claimant with the Claim and the warning from the Respondent in the form of the application to strike out the Claim.

**Employment Judge A. Ross**

**Date: 12 October 2020**