



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms S Parsons

**Respondent:** Enable Care Services (South Wales) Ltd

## JUDGMENT

The claimant's application dated 28 November 2022 for reconsideration of the Judgment sent to the parties on 23 November 2022 is refused.

### REASONS

1. Regrettably the claimant's correspondence was only referred to me on 18 January 2023 and which I treat as an application for reconsideration of the Judgment sent to the parties on 23 November 2023.
2. A case management hearing took place before EJ Moore on 28 October 2022. Notice of that case management hearing was sent to the claimant on the email address provided by her on her ET1 claim form when the claim was first processed by the tribunal. More recently on 13 September 2022 correspondence was sent to the parties by EJ Sharp confirming that the preliminary hearing remained listed for 28 October 2022 and there would be a discussion at that hearing about a potential time limit issue raised by the respondent, with the Judge to decide whether to list a further public preliminary hearing to determine jurisdiction (i.e. whether the claimant's claim was presented within time). The respondent had also contacted the claimant about the hearing. The respondent, on 24 October, sent the claimant and the tribunal a bundle of documents and said they had also sent separately to the claimant an agenda and draft list of issues but the claimant had not provided any comments. On 20 October the tribunal staff had also sent the log in details for the hearing on 28 October. The claimant was therefore contacted about the hearing on 28 October in multiple ways using the email address she had provided to be contacted on about her claim.
3. The claimant failed to attend. EJ Moore recorded in her case management order of 28 October 2022:

*"2. The Claimant failed to attend the hearing. The clerk made contact by telephoning the Claimant. The Claimant informed the clerk she had been called into work. She was asked if she knew about the hearing*

*today and she said that her email inbox was snowed under and she was not getting emails. She was not going to be able to attend today.*

*3.As the Claimant had failed to attend little progress could be made. This has wasted both the Tribunal time and resources and incurred costs for the Respondent who attended today. Within 7 days of the date of this email the Claimant is required to provide the following information to the Tribunal, copied to the Respondent:*

*a)Confirm whether she had received the notice of hearing dated 5 July 2022 (Judge Moore notes the Claimant appears to acknowledge she is aware of a court date in her email dated 9 August 2022);*

*b)If not, provide an alternative email address / postal address so the Tribunal can update the correct means of communicating with the Claimant;*

*c)A written explanation for her failure to attend the hearing today.”*

4. EJ Moore also listed a public preliminary hearing to take place by video on 15 November 2022 to decide whether the claimant's unfair dismissal claim had been presented in time and, if so, whether time should be extended. The claimant was ordered to provide a witness statement, to be sent to the Tribunal and the Respondent by 4pm on 11 November 2022. The case management order contained guidance about what a witness statement was, how it should be structured and what it needed to cover.
5. On 1 November 2022 the case management orders were emailed to the claimant. A notice of hearing for the 15 November hearing was also sent out. The notice of hearing was sent on 28 October and again on 9 November with a change of time. However, both those notices of hearing were in the incorrect form as they listed a case management hearing when a public preliminary hearing was needed to decide the time limit issues. The respondent pointed this out in an email of 10 November 2022 that was copied to the claimant. They also pointed out that to their knowledge the claimant had not complied with EJ Moore's case management order.
6. The claimant responded that day (demonstrating that she was receiving emails) saying *“I was under the impression the hearing was dated for the 15<sup>th</sup> November? I spoke to a gentleman on the phone at the end of October about a hearing. I wasn't aware this was happening. I had an email there was a tribunal next year? I havnt had the time to respond to the email from yesterday I have just taken over as service manager for two service and my workload has been very large and chaotic at this time.”*
7. The claimant cannot have originally thought the first hearing was on 15 November because the date of 15 November was only set at the hearing on 28 October when she did not attend. She knew she had failed to attend as she confirms having spoken to the tribunal clerk on 28 October. Furthermore, given the multiple pieces of previous correspondence sent prior to 28 October about the 28 October hearing I do not consider it likely that the claimant did not or could not reasonably have known about it if she was checking her emails, as she should do, given she had said that was the way in which she wanted to receive correspondence about her case. The claimant

did not say that she had not received the notice of hearing for 28 October; she referred to a hearing on 15 November which she cannot have known about at the time as it did not exist. If she was saying she did not receive notice of the hearing on 28 October, she did not provide an alternative method of contact, as ordered. She provided no clear explanation as to why she had not attended.

8. The matter was referred to me on 10 November 2022. The parties were told that the hearing on 15 November 2022 was being postponed because the incorrect notice of hearing had been sent out. The claimant was then told:

*“In the meantime, the Claimant is being sent a strike-out warning for failing to comply with Employment Judge Moore’s orders of 28 October 2022.*

*The Claimant should note that if she does not provide a satisfactory response to the [s]trike out warning, there is a risk her claim will be struck out and the re-listed hearing will then not go ahead in any event.*

**For the urgent attention of Ms Parsons:**

*Please find attached the strike-out warning and copy of Employment Judge Moore’s case management orders of 28 October 2022. Copies of this correspondence have also been issued to you by post.”*

9. The attached strike out warning told the claimant that I was considering striking out the claim because she had not complied with paragraph 3 of the case management orders of Employment Judge Moore dated 28 October. Again reference was made to a copy of the case management orders being enclosed. The claimant was told if she wished to object to her claim being struck out she had to give her reasons in writing or request a hearing by 17 November 2022.
10. The claimant did not set out her objections to her claim being struck out or request a hearing by 17 November and so on 23 November I struck out the claim. The claimant was again told in the strike out judgment that she had failed to comply with paragraph 3 of the case management order of 28 October 2022 and it appeared her claim was not being actively pursued. The notice said the hearing on 6 December would not go ahead.
11. The strike out judgment was sent out on 25 November 2022. On 26 November 2022 the claimant emailed the tribunal making no reference to the strike out and saying she was aware of the preliminary hearing on 5 December and as she did not have a legal team needed to know where to send her correspondence or evidence. I would observe that whilst her claim had already been struck out, the claimant still continued to ignore EJ Moore’s orders of 28 October at paragraph 3, and continued to fail to comply with them.
12. On 28 November 2022 the claimant emailed the tribunal saying it was apparent the claim had been struck out and she had no support to pursue the claim. She said she had emailed many times asking where she was to send evidence to. She said the preliminary hearing was listed for 6<sup>th</sup> December so there was still plenty of time to send over her evidence. She asked why her case had been struck out when she had not missed the preliminary hearing for 6 December. The claimant sent a similar email later that same day

making similar observations and saying that she had already explained that due to a new job role she had limited time to respond to emails and often found them hard to follow. I treat the emails of 28 November 2022 as being a reconsideration application of my decision to strike out the claimant's claim.

13. At the current time, I do not consider there is any reasonable prospect of my decision to strike out the claimant's claim being varied or revoked as being in the interests of justice. The claimant failed to attend the hearing on 28 October. She knew she had not attended. She was told she had wasted Tribunal time and resources and caused the respondent to incur costs. She was very clearly told that within 7 days she had to confirm whether she had received the original notice of hearing, if not provide an alternative email address for contact with her, and provide a written explanation for her failure to attend. The claimant has never complied with that order. She has never set out what she did or did not receive about the hearing on 28 October despite on the face of it being sent multiple pieces of correspondence about it. She did not provide an alternative means of contacting her if she was saying she did not receive the emails. She has never provided a clear explanation of why she did not attend. The claimant was given another chance to do so on 10 November when she was told that she had not complied with paragraph 3 of EJ Moore's order and she was sent a further copy for reference. The claimant was clearly told that if she did not provide a satisfactory response to the strike out warning there was a risk her claim would be struck out and the hearing that was being relisted would not go ahead. She was clearly told if she wished to object to her claim being struck out she had to give her reasons in writing by 17 November, or write to request a hearing where she could make her objections orally. The claimant did not comply. She did not write objecting to her claim being struck out. She did not try to belatedly fully comply with EJ Moore's orders at paragraph 3.
14. The claimant says she was given not support but I consider that she was given clear direction what she needed to do and when. She was given more than one opportunity. The tribunal staff tell me that they cannot find a record of the claimant emailing multiple times asking where to send her evidence to. In any event EJ Moore quite clearly directed the claimant to respond in writing to the tribunal and copy that to the respondent. The claimant showed herself capable of sending other emails to the tribunal and the respondent. The claimant refers to there being time to prepare for a preliminary hearing on 6 December, and that time had been extended for that. She fails however to address her continued lack of compliance with paragraph 3 of the case management order of 28 October, which was not about her witness statement for the public preliminary hearing (albeit that was also past the date it was due, namely 11 November 2022) but about what EJ Moore had directed the claimant to do at paragraph 3, in the face of the serious point about the claimant failing to attend the 28 October 2022 hearing. The claimant's email of 1 November dodges the question of what emails she received and when about the hearing on 28 October 2022.
15. The claimant says that she had limited time because of the demands of a new job role. That is, however, a situation that very many of our litigants in person find themselves in and who endeavour to comply with case management orders. Further, the claimant had been warned that if she did not comply with the case management orders she risked her claim being struck out and the hearing on 6 December not going ahead. She still has never complied. A

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claimant who has chosen to bring a claim can reasonably be expected to attend hearings and to comply with tribunal orders. Not attending the hearing and not complying with orders is a serious default in the face of the tribunal which has never been properly explained by the claimant. The tribunal has responsibilities to all users of our system which is under considerable demand. Not attending hearings and not complying with tribunal orders detracts scarce judicial and tribunal resources away from other users. It also places the respondent at additional unnecessary cost. It would not be in the interest of justice to revoke the strike out of the claimant's claim when, at the current time, the claimant's conduct about the 28 October 2022 remains unexplained in the way EJ Moore directed and the orders about that have not been complied with. To do so would not be in accordance with the good administration of justice or fair to other users of our system or the respondent. I have no reassurance, without compliance, that there would not be further default and/or non attendance by the claimant.

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Employment Judge R Harfield

Date 7 February 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON 8 February 2023

FOR THE TRIBUNAL OFFICE Mr N Roche