



## EMPLOYMENT TRIBUNALS

**Claimant:** Ms Kenny Olatunji  
**Respondent:** Openreach Ltd

**Heard at:** London Central (by CVP)

**On:** 23/4/2024  
**Before:** Employment Judge Mr J S Burns

### Representation

**Claimant:** Mr K Harris (Counsel)  
**Respondent:** Ms R Page (Solicitor)

### JUDGMENT

1. The Respondent's application to strike out the claims/a deposit order is dismissed
2. The Claimant is ordered to pay to the Respondent by 14/5/24 costs in the sum of £2000.

### REASONS

1. On 3/3/23 the Claimant while still employed by the Respondent, presented this claim.
2. On 21/6/23 a CMPH was held (attended by the Claimant) at which the Claimant was directed to particularise her claim and provide an impact statement and medical records within 35 days - ie by the end of July 2023, and the claim was listed for a 5-day trial starting on 2/9/24.
3. On 26/7/23 the Claimant applied for extensions for compliance and these were granted first to 31/8/23, and then to 17/10/23.
4. The Claimant provided a few heavily-redacted medical documents by the end of October 23 but failed to provide an impact statement or further particulars.
5. The Claimant wrote several abusive emails - for example in an email dated 1/11/23 (written in response to reasonable communications from the Respondents solicitor) the Claimant made unnecessary unjustified accusations that "*Openreach/ its solicitor have the audacity to brazenly tell lies with the aim of deceiving and confusing the Employment Tribunal. ...the Respondent/Solicitor are harassing and embarrassing me through their lies, corrupt ways to sway the Employment Tribunal and abuse the Employment Tribunal process*". More recently when the Respondent's solicitor emailed the Tribunal on 22/3/24, copying in the Claimant with a gracious remark "*We appreciate that the Claimant shall now be in hospital and unavailable, we wish her well in her surgery*", the Claimant responded "*I have to say that I reject and do not accept any well wishes from the Respondent. It is totally false*". This is vexatious, abusive and unreasonable conduct by the Claimant as contemplated by Rule 37 (strike out) and Rule 76 (costs).

6. The Claimant after issuing her claim, but while still employed by the Respondent, also wrote and said abusive and vexatious comments to/about the Respondent's potential witnesses. Mr Harris submits that these particular comments, regrettable though they are, were not made within these proceedings.
7. The Respondent applied for an unless Order which was refused but instead the Tribunal issued a notice dated 6/11/23 as follows "*It appears the claimant has failed to set out her claim adequately or at all and has now failed to comply with a tribunal order. It would appear the claimant's conduct of the claim may be unreasonable and/or that the claim may not be actively pursued. As the claim is not set out clearly, there may be no reasonable prospect of success....The claim will be set down for a public preliminary hearing with a time estimate of one day to consider if the claim should be struck out for the reasons given above.*"
8. On 12/2/24 a notice was issued for an OPH on 28/3/24. The Respondent applied to strike-out on numerous grounds including non-compliance with directions, no reasonable prospect, and vexatious behaviour. Alternatively, the Respondent applied for a deposit order.
9. On 21/3/24, the Claimant applied for an adjournment as she was about to be admitted to hospital. The Claimant did not attend the OPH on 28/3/24. I was concerned about the lateness of the adjournment request seeing that the notification to her of her hospital admission was dated 26/2/24. However, I granted the adjournment so that she could have an opportunity to respond to the Respondent's written submissions which were served and filed on 28/3/24, and attend or arrange representation at the adjourned OPH on 23/4/24. I directed her to either disclose unredacted medical documents or to send them to the Tribunal before today's hearing so they could be inspected.
10. The Claimant recently instructed Mr Harris and with his assistance/encouragement has remedied her previous default. She has not appeared today (23/4/24) but is represented by Mr Harris.
11. On 22/4/24 she produced her GP notes from mid-2022 to date and numerous previously undisclosed medical letters and unredacted versions of the documents which were improperly redacted previously. These have been disclosed today to the Respondent's with the consent of the Claimant, and on Ms Page having given an undertaking on behalf of the Respondent that they will be used only for this litigation and that no attempt will be made by the Respondent to contact the Claimant's medical advisors.
12. The Claimant has also now produced a satisfactory impact statement and, after a short adjournment during the hearing today, Mr Harris has produced a further version of a list of issues which provides a sufficiently clear and succinct expression of the claims. This is set out in the Schedule to the separate CMO I have issued today.
13. I accept that the Claimant has had some personal difficulties such as trouble with her landlord, and also some health problems and recently has undergone hospitalisation. I nevertheless regard these as inadequate excuses for her prolonged failure to comply with directions and the consequent delay, additional costs and waste of tribunal resources.
14. Despite the Claimant's previous default, the claims can still be tried within the September 24 listing<sup>1</sup> and in the light of the recent efforts to rectify the default, it is disproportionate to strike out the claims. A deposit order is also inappropriate as it is impossible to assess the prospects of the claims at this stage.
15. The Tribunal can mark adequately its disapproval of the Claimant's vexatious conduct and her unreasonable previous failure to comply with directions by making a costs order against her.

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<sup>1</sup> Subject to the effect of her issuing a second claim which she may do consequent on her recent dismissal.

16. Ms Page informed me that the Claimant has recently been dismissed by the Respondent but received a payment of £15000 from the Respondent. Mr Harris told me that the Claimant is unemployed, has large debts and is in receipt of state benefits. However he also told me (in response to my asking about him about this) that the Claimant has been able to raise and pay him a substantial brief fee for his services today under direct professional access arrangements. I have taken this information into account in considering whether to award costs against the Claimant and if so in what quantum.
17. Ms Page produced a schedule of the additional legal costs (£2859.50) that the Claimant's default and vexatious behaviour has cost the Respondent over the last few months. In the light of submissions from Mr Harris I have reduced this to £2000. Having regard to the extra work and attendances required, and in all the circumstances, this is a reasonable sum to order the Claimant to pay within 21 days, and in my view it is right so to order.
18. The Claimant is warned to comply with directions in future and to refrain from any further abusive and vexatious comments to or about the Respondent, Ms Page or the Respondent's potential witnesses.

Employment Judge J S Burns  
23/04/2024

For Secretary of the Tribunals

9 May 2024  
Date sent to parties

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