



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms V Madhavji

**Respondent:** 1. Watson Ramsbottom Ltd  
2. Jonathan Leach  
3. Stuart Maher  
4. Chris Mullaney  
5. Mark Cartin

**Heard at:** Manchester Employment Tribunal

**On:** 16 February 2024

**Before:** Employment Judge M Butler

## Representatives

For the claimant: Self representing.

For the respondent: Ms Hosking (of Counsel)

# JUDGMENT (AT PUBLIC PRELIMINARY HEARING)

1. The below refers to allegations as recorded by EJ Slater in the annex to her Case Management Orders.
2. Pursuant to Rule 37 of the Employment Tribunal Rules of Procedure 2013, the following allegations have been struck out for having failed to comply with tribunal directions:
  - a. Protected Disclosure 5.
  - b. Detriments 1-5 and detriments 8-12.
  - c. Harassment related to sex in its entirety.
  - d. Harassment related to race in its entirety.
  - e. Direct race discrimination: 6.2.1.4, 6.2.1.5 and 6.2.2.
  - f. Any other claims within the claim form that have not been recorded by Employment Judge Slater in the draft list of issues, which the claimant failed to particularise as per the directions of the tribunal.

3. At this hearing the claimant withdrew any allegations she brings of indirect disability discrimination. Any claims insofar as they relate to indirect disability discrimination are dismissed on withdrawal.
4. After the hearing, the claimant withdrew her claim that the respondent failed in its duty to make reasonable adjustments. Rather than issue a separate judgment, I add this here. By letter dated 05 March 2024, the claim of a failure by the respondent in its duty to make reasonable adjustments is dismissed on withdrawal.
5. For the avoidance of doubt, there are no other disability discrimination complaints, and therefore all claims relating to disability discrimination have been dismissed.

## REASONS

### INTRODUCTION

6. The decision was sent out to the parties on 26 March 2024. The claimant made a request for the written reasons for the decision by email dated 10 April 2024. These are those written reasons.
7. To assist me at the hearing I was provided with a bundle that contained 265 pages. I had access to the tribunal electronic file. And the claimant brought with her copies of relevant correspondence and medical notes. I am grateful for the parties for providing these as it ensured that I had everything in front of me.

### RESPONDENT'S APPLICATION FOR STRIKE OUT

8. The respondent made applications to strike out the claim on 01 February 2024 and on 19 April 2024. These were made on the basis that the claims had no reasonable prospects of success and that the claimant had not complied with tribunal orders.

### LEGAL PRINCIPLES

9. Pursuant to Rule 37(1)(c) of the Employment Tribunal Rules of Procedure 2013, the Employment Tribunal can strike out all or part of the claim for '*for non-compliance with any of these Rules or with an order of the Tribunal*'. However, before striking out of a claim Rule 37(2) explains that this is only possible if '*the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing*'.
10. A claim can also be struck out where a claim has no reasonable prospects of success (Rule 37(1)(a) of the Employment Tribunal Rules) or where a party conducts itself unreasonably (Rule 37(1)(b) of the Employment

Tribunal Rules).

11. The Overriding Objective is a core principle that the tribunal must have regard to when deciding whether to strike out a claim.
12. All the relevant circumstances should be considered when deciding on strike out. And the EAT in **Weir Valves & Controls (UK) Ltd v Armitage [2004] ICR 371** identified that would include the following:
  - a. The magnitude of the non-compliance
  - b. Whether the default was the responsibility of the party or his or her representative
  - c. What disruption, unfairness or prejudice has been caused
  - d. Whether a fair hearing would still be possible
  - e. Whether striking out or some lesser remedy would be an appropriate response to the disobedience. In other words, is strike out proportionate in all circumstances?
13. The EAT in **Harris v Academies Enterprise Trust [2015] IRLR 208**, a case in which the respondent's solicitor had failed to provide the respondent's witness statements by the start of the final hearing, Mr Justice Langstaff noted that a tribunal may wish to consider why the party in breach has behaved as he has, and said,

*“A failure to comply with orders of a tribunal over some period of time, repeatedly, may give rise to a view that if further indulgence is granted, the same will simply happen again. Tribunals must be cautious to avoid that. Equally, what has happened may be an aberration. Of their nature there may be circumstances that are unlikely to reoccur. This requires a careful judgement.”* (paragraph 26)

#### SUBMISSIONS FROM PARTIES

14. Ms Hosking, on behalf of the respondent, presented written submissions in advance of the hearing, and made oral submissions at the hearing. This included the following:
  - a. When considering whether to exercise its discretion to strike out the tribunal should take account of the Overriding Objective. Part of which is the need to deliver justice within a reasonable period of time. The tribunal should also consider that resources need to be attributed fairly, including considering other cases.
  - b. The tribunal should identify the reason for non-compliance and whether it is likely to recur. And whether there are options short of strike out that would be appropriate.
  - c. The claimant is an employment lawyer and understands what is needed from her.
  - d. The claim form included a factual summary and indicated that more time was needed to detail allegations. There was no attempt to explain why more time was needed at that point. And that was over

- a year ago. The claims brought are the claimant's claims and they must have been in her mind at the time she presented the claim.
- e. In addition, the claimant attached an Occupational Health report and an email entitled 'Protected Disclosure'. Neither of these documents provide clear particulars of the allegations brought.
  - f. The respondent raised the issue of a need for further and better particulars in its grounds of resistance, none were provided.
  - g. A Preliminary Hearing took place on 18 July 2023 in front of Employment Judge Slater. She tried hard to draw out the details of the claim. Some were identified but it was not possible to finalise the list of issues. Those that could not be completed, EJ Slater provided a structure for the causes of action which the claimant was to add the detail to. This was subject to a direction with a deadline of 24 August 2023. The claimant was also directed to send to the respondent a Disability Impact Statement by 18 July 2023.
  - h. The claimant proposed new deadlines and failed to meet them.
  - i. During this period the claimant has provided GP letters that explain some of the delay in complying, including stress, tiredness, oversleeping and affects on concentration. However, during this period the claimant was also able to engage in extensive correspondence with both the respondent and the tribunal in the form of applications. So although it may have taken her longer, this shows she is capable of writing a document when needed.
  - j. Further, the medical documents do not adequately explain why the disability impact statement and list of issues have not been completed.
  - k. It must be inferred that the claimant has prioritized something else, such as correspondence, rather than clarifying the claim. That is intentional non-compliance.
  - l. There are no suitable alternatives to strike out. Each time the claimant has asked for more time, and was optimistic about getting it done, the claimant failed to meet those self-imposed deadlines.
  - m. Specifically, an unless order would likely generate further applications and take up more tribunal time and not take the case any further.
  - n. There is an overlap between non-compliance with tribunal orders and unreasonable conduct when considering whether to strike out a claim. As her non-compliance with directions has been undertaken in an unreasonable manner.
  - o. This is not untrained Litigant in Person, but rather a legally trained litigant.
15. The claimant had included responses to the claimant's applications in writing across several documents and made oral submissions at this hearing, which included the following:
- a. That she had advised the respondent representative repeatedly to contact her by post only and this was ignored.
  - b. On 30 October 2023, the respondent's solicitors sent her medical documents using unencrypted email, which caused her great distress.
  - c. That on 24 August 2023 the claimant wrote to the tribunal about her

- concerns of her medical data being submitted electronically, especially in the context of her claim that included allegations of cyberstalking.
- d. The claimant asked for a direction from the tribunal that the respondent representative refrained from transmitting medical documents by electronic means, and that directions for the provision of medical records be postponed. And that no response to that was received.
  - e. That under GDPR there was a need to take adequate protection of data.
  - f. That neither the respondent nor the tribunal replied to requests about added protections.
  - g. That the impact of continued cyberstalking has caused the delays. Particularly see the medical evidence in January 2024, which is from December 2023, which explains that the claimant suffers an aggravation of her symptoms whenever she has to revisit allegations of cyberstalking.
  - h. That it is highly relevant that respondent is deliberately ignoring the claimant when she asks them to refrain from electronic communications and to safeguard data.
  - i. The respondent has not complied with directions of EJ Holmes. And have not said whether claims are contained in the claim form.
  - j. That there are continuing cyberstalking.
  - k. Those are the reasons for the delay, and no disrespect was intended.
  - l. In relation to bib-compliance with tribunal directions, the impact of the claimant's disability and concern about privacy of data, and that respondent is breaching GDPR, made it difficult for claimant to review her claim.
  - m. To strike out the complaints is a draconian measure.
  - n. Medical records and disability impact statement need safeguarded.
  - o. The claimant is bringing the proceedings in the public interest, when it is difficult for her to do so.
  - p. A lesser measure than strike out would be appropriate.

## RELEVANT FACTS

16. The claimant was employed as an Associate Solicitor from 15 February 2017. She was experienced in Employment Law and has higher rights of audience as a solicitor-advocate.
17. The claimant presented a claim form on 03 February 2023. In the claim form the claimant ticked the boxes at part 8 to indicate that she was bringing claims for race discrimination, disability discrimination, sex discrimination and whistleblowing detriment. The claimant attached three documents to her claim form: (i) factual summary (ii) Protected Disclosure document and (iii) an Occupational Health report. None of these explained the specific complaints that the claimant was pursuing.
18. The claim was considered at a Case Management Preliminary Hearing on 18 July 2023 before EJ Slater. EJ Slater discussed the allegations with the claimant being brought and recorded a number of the allegations being

pursued. However, a final list of issues was not completed in the allotted time. EJ Slater provided the claimant with guidance as to the details needed in respect the remaining claims and provided a structure for how to present the remaining claims (see pp.170-181). The claimant was directed to provide the outstanding details and to complete the list of issues by 16 August 2023 (although the claimant misunderstood this and read it as 24 August 2023, which was 4 weeks from the date the record of hearing was sent rather than 4 weeks from the hearing date itself).

19. A further Preliminary Hearing was listed to take place on 15 November 2023. This was listed to consider a number of matters, including finalizing the list of issues and determining any amendment issues that may have arisen through the provision of further information.
20. On 24 August 2023, the claimant wrote to the tribunal applying for an extension of 3 weeks (taking the dates for compliance to 14 September 2023) to the directions for the completed list of issues and to provide a disability impact statement (see p.202). In short, this is presented as the claimant seeking a reasonable adjustment due to medical reasons. The claimant at this point considered herself well enough to complete both the draft list of issues and the disability impact statement by 14 September 2023.
21. The claimant provided a copy of a GP letter dated 14 July 2023 (see p.205). This provides no explanation as to why the claimant could not provide details of her claim or a disability impact statement by the tribunal deadlines. Rather, it relates to an application made by the claimant for anonymity, for a private hearing and permanent publicity restrictions.
22. On 05 September 2023, the respondent replied to the claimant's letter of 24 August 2023 and explained that considering the overriding objective, that some of the allegations are up to 2.5 years old, that although sympathetic to the claimant, any extension to the date for compliance should be on the basis of an unless order.
23. The claimant did not comply with the tribunal directions by the self-imposed deadline of 14 September 2023.
24. The respondent made an application to vary the case management directions on 22 September 2023 (see pp.206-207). This applied to vacate the 15 November 2023 hearing date and to have it re-listed in the new year. And to make the claimant subject to an unless order, whereby if she did not comply with tribunal directions by 20 October 2023 then her claims would be struck out.
25. The claimant wrote to the tribunal again on 29 September 2023 (See pp.208-211, with a correction to the letter sent on 30 September 2023, see p.216)). The claimant sought a further extension to the time to comply with the case management directions. The claimant explained that she had not been able to comply with the tribunal directions within the additional 3 weeks she had requested. She provided a GP letter in support. The claimant also writes that she has been locked out of her employer's systems, which is

impeding her from pleading the factual particulars of her claim. The claimant sought a variation to the directions with compliance to be by 16 October 2023. Again, the claimant when making this application considered that she was well enough to provide the required details by this date, otherwise she would have sought more time.

26. In support of her application of 29 September 2023, the claimant included a copy of a GP letter dated 26 September 2023 (see p.214). This letter suggests that the claimant needs a reasonable adjustment in respect the time to comply with directions. And explains that she has symptoms of tiredness, oversleeping and affects on her concentration. This suggests an adjustment of allowing the claimant up until 14 September 2023 (although this is likely to be referring to 16 October 2023) to provide the information, as her symptoms has prevented her from submitting the information by the deadline.
27. The claimant did not comply with the tribunal directions by the self-imposed deadline of 16 October 2023.
28. The respondent wrote to the tribunal on 30 October 2023, to reiterate its applications of 22 September 2023 (see pp218-219).
29. On 31 October 2023, Employment Judge Allen directed the following (see pp.222-223):
  - a. The hearing on 15 November 2023 was postponed.
  - b. The hearing be listed for a one-day preliminary hearing in public. This will determine the respondent's application for strike out, if it is pursued.
  - c. That the claimant provide a revised list of complaints and issues in compliance with EJ Slater's orders within 14 days that this order was sent out, that being 14 November 2023. And by that same date to provide an explanation as to why the claimant has not done what she was directed to do.
30. The claimant wrote to the tribunal by letters dated 13 November 2023 (pp.249-250) and 14 November 2023 (pp.247-248).
31. The letter dated 14 November 2023 does not provide that directed by EJ Slater, nor does it provide the information directed by EJ Allen. Rather it focusses on other matters.
32. The letter dated 13 November 2023 is an application to vary the case management directions of EJ Allen. This refers to various medical documents. And explains that the documents already supplied includes all the necessary details, including the letter dated 29 September 2023 and in the protected disclosure document attached to her claim form. The claimant explains that the continued delay is by reason of the continued impact of her disability. The claimant raised again applications to be made pursuant to Rule 50 of the ET Rules of Procedure.
33. The respondent writes to the tribunal on 03 January 2024 (see pp.251-253).

Within this correspondence the claimant is reminded of the need by the claimant to take steps to comply with the Tribunal Orders.

34. On 09 January 2024, the claimant sent a letter to the tribunal (not in the bundle but on the tribunal file). This is said to be further evidence to support varying the directions of EJ Allen. This included four medical letters: a GP letter to the tribunal dated 26 September 2023 and a further letter dated 15 November 2023. And two further GP letters, dated 26 September 2023 and 13 December 2023:

- a. The GP letter to Manchester Tribunal dated 26 September 2023, is provided in support of the claimant seeking more time to reply to the tribunal's orders. It explains the claimant's symptoms. And explains that the claimant had been unable to provide the information as directed by 14 September 2023, due to her symptoms.
- b. The GP letter to Manchester Tribunal dated 15 November 2023, is provided in support of the claimant seeking more time to reply to the tribunal's orders. It explains the claimant's symptoms. And explains that the claimant had been unable to provide the information as directed by 13 November 2023, due to her symptoms.
- c. The letter dated 26 September 2023 references the claimant's symptoms of tiredness, oversleeping and poor concentration. There is no reference to her being unable to comply with the tribunal orders in this letter.
- d. The letter dated 13 December 2023 references that the claimant has aggravated symptoms of her adjustment disorder. Repeats the symptoms of oversleeping and sudden attacks of tiredness, especially when revisiting events of her cyberstalking and harassment. There is no reference to her being unable to comply with the tribunal orders in this letter.

35. On 24 January 2024, the respondent wrote to the claimant (see p.254) attaching the template list of issues, explaining that it was vital that the claimant completed it in advance of the upcoming preliminary hearing.

36. On 01 February 2024, the respondent wrote to the tribunal (see pp255-256) to explain that the claimant had still not complied with the tribunal directions of EJ Slater and to confirm that it was pursuing a strike out application on the basis that the claims have no reasonable prospects of success and on the basis of failure to comply with Tribunal orders.

37. At the commencement of this hearing, the claimant had still not complied with the directions of the tribunal.

## CONCLUSIONS

38. These conclusions focus only on the need to provide a completed list of issues in accordance with EJ Slater's directions. Although the disability impact statement formed part of the decision before me on 16 February 2024, since then and before completing these written reasons, the claimant had withdrawn all of her disability discrimination complaint. However, for the



avoidance of doubt, the disability discrimination complaints were not struck out at this hearing, as the claimant had sufficient reason to explain why she had not complied with that particular direction. With that reason being that her medical records contained personal sensitive data and the respondent had not put in place sufficient safeguards to protect that data. However, this will not be expanded on further in these reasons.

39. Turning to the direction to complete the list of issues.
40. I echo the submission of Ms Hosking's in that the Overriding Objective is a crucial factor to be considered when determining any application to strike out a claim. And that this is multi-faceted and includes the need to deliver justice to parties in a reasonable time, and to ensure that resources are not disproportionately focused on any one claim such as to deprive other complainants of access to justice.
41. The claimant has clearly not complied with the directions of the Employment Tribunal. She was directed to complete the list of issues, having received guidance and a suitable framework from EJ Slater at the hearing on 18 July 2023. This was to be completed by 16 August 2023. This was not completed. There was a further direction from the tribunal with respect this by EJ Allen, requiring EJ Slater's directions to be complied with by 14 November 2023. This was not complied with.
42. The claimant provided two reasons why she had not complied with directions of the tribunal: the first related to not wanting personal information of hers to be transmitted electronically by the respondent. And secondly, that she needed more time to comply, as her delays had been caused by medical reasons relating to cyberstalking. The claimant specifically referred to medical documents from December 2023 and January 2024. The claimant also made submissions around the respondent not complying with tribunal directions, and that there was enough detail in her claim form.
43. I was not satisfied that the medical documents supported the need for more time to comply with the tribunal directions. The claimant had had plenty of opportunity to comply with the directions of the tribunal. And this is in circumstances where the claimant is a qualified employment lawyer. The claimant herself considered that her health was sufficient to comply with the direction around 24 August 2023 (applied for a 3-week extension) and 29 September 2023 (again, applied for a 3-week extension), when she applied for short extensions. Otherwise, she would have applied for a suspension of those directions or a significantly longer period to comply on the basis that she could not comply due to her health. And there is nothing in the medical notes that suggest that the claimant was incapable of producing the documents she was directed to produce. Further, the claimant during this period was able to produce and make several lengthy applications to the tribunal. I was not satisfied that this was a reason that would excuse the claimant from complying with tribunal directions.
44. For the avoidance of doubt, the GP letters at their height indicate that the claimant's symptoms were impacting her ability to comply with the directions and that more time would be needed. There is no evidence to support that

she simply could not comply with the directions. At this hearing there was no evidence of any attempt to progress the list of issues beyond that created by EJ Slater. This was at the same time that the claimant was able to make applications, where she referred to matters around the cyber-bullying, which to a degree contradicts the information in the medical notes. As she was capable of writing those, despite this being the reason put forward as why the claimant could not comply with EJ Slater's directions.

45. Further, there is no medical evidence that supported that the claimant was unable to comply with the directions of EJ Slater between 13 November 2023 (the date referred to in the GP letter of 15 November 2023) and today's hearing. This remained unexplained.
46. I was also not satisfied that a lesser sanction than strike out would be appropriate, given the amount of time the claimant has now had to comply with the directions, that the claimant had self-imposed new deadlines that were not met. And given that the claimant has made no attempt to provide the details of the claim in advance of this hearing. Consideration was given to whether to issue a strike out warning or whether to make the directions subject to unless orders. However, I did not consider that these would be appropriate and would likely simply necessitate further applications for to vary n pattern in this case to date).
47. I turned to consider the list of issues created by EJ Slater. And where I was not satisfied that the claim was clear enough for the respondent to understand it, I have struck those claims out. This does not affect all claims in this case. The following claims were struck out (and this is a reference to the list of issues recorded by EJ Slater at the Preliminary Hearing):
  - a. Protected Disclosure 5.
  - b. Detriments 1-5 and detriments 8-12.
  - c. Harassment related to sex in its entirety.
  - d. Harassment related to race in its entirety.
  - e. Direct race discrimination: 6.2.1.4, 6.2.1.5 and 6.2.2.
48. For the avoidance of any doubt, any allegations not contained in EJ Slater's attempted list of issues, which the claimant has failed to provide details of in breach of tribunal directions, are all struck out because of failing to comply with tribunal directions.
49. The strike out application on the grounds of the claims having no reasonable prospects of success did not add anything to the decision above.

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Employment Judge **Mark Butler**

Date\_08 May 2024\_\_\_\_\_

JUDGMENT SENT TO THE PARTIES ON  
13 May 2024

FOR THE TRIBUNAL OFFICE

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