



# EMPLOYMENT TRIBUNALS

**Claimant:** C Nwachukwu  
**Respondent:** Queen Mary University of London  
**Heard at:** East London Hearing Centre (by video)  
**On:** 23 August 2023  
**Before:** Employment Judge Housego

## Representation

**Claimant:** Chike Ezike, Solicitor, of Prime Solicitors  
**Respondent:** Eleanor Wheeler, of Counsel, instructed by Eversheds Sutherland (International) LLP

## JUDGMENT

The claim is struck out.

## REASONS

1. This hearing was originally listed as a standard case management hearing, in private. However, as there had been almost nothing from the Claimant's solicitor since they wrote to the Tribunal on 03 June 2024 to say that they had been instructed (in late May according to both the Respondent and Mr Ezike today), EJ Iman caused the Tribunal to write to the Claimant's solicitor on 16 August 2024 telling him that the hearing would be converted into a public hearing, and the Claimant was advised that this was in order that the Tribunal could consider striking out the claim. The Claimant's representative was told that he would be required to provide a clear explanation as to why he had not responded to correspondence from the Respondent and failed actively to pursue the claim. The Claimant was told that absent that clear explanation (or if they failed to attend without providing good reason in advance) the consideration would be given to striking out the claim.
2. At the start of the hearing Ms Wheeler advised me that at 1:26 today her instructing solicitor had received an email from the Claimant's solicitor attaching two documents. One was a revised list of issues, and the other a completed standard form agenda. Ms Wheeler had had only a brief

opportunity to consider these documents but made a point about each of them. The agenda stated that there was the intention to withdraw the public interest disclosure claim, and an intention to apply to amend to include three new claims - a claim for direct disability discrimination, for failure to make reasonable adjustments, and, under S39, discrimination in the arrangements for employment. The list of issues omitted the public interest disclosure claim, and included the matters which the agenda said would be the subject of application to amend. Neither was satisfactory, and the hearing today could make no satisfactory progress as a result. There could not be a sensible discussion about a list of issues when there was no pleading from which to derive the issues.

3. The Respondent's solicitor had written a letter of application seeking the striking out of the claim, dated 22 August 2024. The substantive part of that letter sets out matters cogently and so I replicate it below:

***“Background***

*By way of background, there has been multiple failings by the Claimant and his representative to respond to correspondence and actively pursue the claim as follows:*

- 1. In accordance with the Tribunal's Order dated 16 May 2024, we provided the Claimant with the Respondent's draft List of Issues on 22 May 2024.*
- 2. We were informed on 28 May 2024 that the Claimant's representative had been instructed to act. The Claimant's representative also explained that the Claimant was intending on making an application to amend his claim and sought the Respondent's agreement to this application being made by 30 June 2024. In addition, the Claimant's representative sought to agree an extension to submit the Claimant's Schedule of Loss to 30 June 2024 and for the parties to file a joint List of Issues by 21 August 2024.*
- 3. We responded to the Claimant's representative on 28 May 2024 to explain that it was a matter for the Claimant as to when he submitted any application to amend his claim and that the Respondent could not agree to any amendments to the directions set by the Tribunal until the application had been made.*
- 4. The Claimant's representative emailed the Tribunal on 3 June 2024 enclosing a notice of acting. The Claimant's representative stated that an application to amend the claim would be made by 30 June 2024, following which the Claimant's Schedule of Loss and List of Issues would be filed by 21 August 2024.*
- 5. We responded on 5 June 2024 and noted that the Claimant should complete the List of Issues based on the current claim, as any application to amend the claim would need to be submitted and then would be dealt with by the Tribunal accordingly.*
- 6. Tribunal correspondence dated 14 June 2024 confirmed that it was for the Claimant to decide when any application to amend the claim should be*

made.

7. *The Claimant did not file any application to amend his claim by 30 June 2024, nor did he submit his Schedule of Loss by this date.*
8. *A further order from the Tribunal of 25 July 2024 requested the parties to confirm to the Tribunal by email, on or before 8 August 2024, that they will be ready to proceed with the Preliminary Hearing.*
9. *We again sought to secure comments from the Claimant's representative on the draft List of Issues on 25 July 2024 and 5 August 2024. The Claimant's representative responded on 6 August 2024 and stated that they would respond before 8 August 2024. However, no further response has been received from the Claimant's representative on the List of Issues.*
10. *We sent the Claimant's representative a draft agenda for the Preliminary Hearing on 6 August 2024 but again, no response has been received.*
11. *On 8 August 2024, the Respondent confirmed its readiness for the Preliminary Hearing and set out the failure of the Claimant's representative to provide comments on the List of Issues and the Schedule of Loss.*
12. *On 16 August 2024, the Tribunal instructed that the Claimant and/or his representative, by 12 noon on 21 August 2024, provide a clear explanation as to why they had not responded to correspondence from the Respondent and failed to actively pursue the Claimant's claim. Neither the Claimant nor his representative provided the information requested.*

*As is clear from the timeline above, the Claimant has failed on multiple occasions to comply with orders, and to provide comments on the draft List of Issues and now the draft Agenda for the Preliminary Hearing.*

***Detailed reasons for Strike Out (or Unless order in the alternative)***

*The Respondent requests that the Claimant's claims be struck out on the grounds that:*

1. *The Claimant has not complied with the orders of the Tribunal dated 16 May 2024, 25 July 2024, and 16 August 2024, and no reason for this non-compliance has been provided despite the Tribunal requesting this. This has caused prejudice to the Respondent, who has not been able to properly understand the Claimant's position and the necessary details of his claim, or properly prepare for the Preliminary Hearing. Further, the Respondent has been incurring additional costs from the continued non-compliance by the Claimant and will suffer further prejudice if the situation continues including being unable to prepare fully for any future hearing. The Respondent respectfully submits that the Claimant is conducting these proceedings unreasonably by disregarding the orders set down by the Tribunal.*
2. *The Claimant has not actively pursued the claims. The Claimant has not provided the Schedule of Loss or comments on the draft List of Issues and*

*draft Agenda despite the numerous requests made by the Respondent. Almost three months has passed since the Tribunal's deadline for the Claimant to provide the Schedule of Loss or comments on the draft List of Issues. Additionally, the Claimant's representative indicated a possible amendment to the claim and, again despite a period of nearly three months passing, no application has been received."*

4. As this was so clear, Counsel sensibly restricted her submission to adopting that letter in full (it asked for an Unless Order in the alternative, but I have not reproduced that part, given the decision I made), and bringing the situation up to date. Those submissions were:
  - 4.1. There was no explanation of the delay as was required by EJ Iman.
  - 4.2. There was still no schedule of loss.
  - 4.3. There was still no application to amend, although
  - 4.4. the list of issues that was sent assumed that the claim was as it was said it would be when an application to amend had been made and on the assumption that it would be allowed.
  - 4.5. This was the more remarkable as the Claimant's representative had been stating since late May that there would be an application to amend.
  - 4.6. It was the worse as the Tribunal had more than once said that it ought to be made without delay, and there was no explanation offered for the delay.
  - 4.7. It was not right to put in the agenda wholly new claims when there was no application to amend to include them.
  - 4.8. The main basis of the claim in box 8.2 of the claim form was the public interest disclosure and that was being withdrawn.
  - 4.9. It was impossible to undertake case management when it was not clear what the Claimant's case was, so that no progress was possible today.
  - 4.10. There had been and remained non-compliance with Tribunal Orders, and the case had not been actively pursued, although it was accepted that the Claimant and his representative had attended today, but what had been tendered today was last minute (almost literally) and unsatisfactory for the reasons given.
5. I asked Counsel to send me the email with the attachments, and she did, copying in the Claimant's solicitor.
6. I asked Mr Ezike for his submissions. Mr Ezike had some technical problems logging in, but I was able to suggest a way for him to overcome them, and so after a short pause he gave his submissions. They were:
  - 6.1. He offered an apology to the Tribunal and to the Respondent for the

delays.

- 6.2. He had been trying to obtain the information necessary for the application to amend.
  - 6.3. He had reviewed the claim and appreciated that it would benefit from amendment. He had to get information from the Claimant, and this took longer than he was expecting.
  - 6.4. While he had received the letters from the Respondent he had delayed replying until he had the necessary information.
  - 6.5. He had simply overlooked the letter from the Tribunal sent at the request of EJ Iman – had he seen it there was no reason for him not to have responded and he would have done.
  - 6.6. He had attempted to ensure that today's hearing was productive by providing the agenda and list of issues.
  - 6.7. It was premature to strike out the claim and the application should be dismissed.
  - 6.8. An Unless Order was not appropriate. The Schedule of Loss would be provided. All the information was now available about the Claimant's new job. It was accepted that, with hindsight, it would have been better to put in the Schedule of Loss and then amend it or bring it up to date, but it could now be submitted.
7. I asked Mr Ezike for some detail about his submissions, as there was nothing concrete about them:
- 7.1. Whose delay was it in getting information from the Claimant? Mr Ezike accepted that he could have made more of an effort to ensure that he was in receipt of the information he needed, but it had been ongoing for a while.
  - 7.2. Whose delay was it? It was not that of any one person.
  - 7.3. Was it simply inactivity? No, information was being sought for the amendment application.
  - 7.4. Did he have all that information now? He had some information.
  - 7.5. Was he in a position to make that application now? Yes, he was.
  - 7.6. Why, then, had he not made it for this hearing? It had to be made formally, and some dates were still not obtained.
  - 7.7. So, as it still the case that he did not have the information to make an application to amend? He did.
  - 7.8. When did he get the last piece of information? Today.

- 7.9. What was it? Dates.
  - 7.10. Who did he get them from? The Claimant.
  - 7.11. Why could he not get them from the Claimant before today? It was more than dates, and specifics were needed.
  - 7.12. This is all totally unspecific – could you give precise information? Some of the alleged incidents were in 2022 and detail was needed.
  - 7.13. Wouldn't they be out of time at the date the claim was issued and even more so now? No, they were part of a series of events, a course of conduct.
  - 7.14. These did not look like relabelling of the existing claims as they added a claim for reasonable adjustments and under S39 and direct discrimination. The Claimant had referred to mental health in his claim form and that was the link to the disability discrimination claims on facts already pleaded.
  - 7.15. How was it appropriate to provide a list of issues omitting part of the pleaded claim and adding in matters not pleaded and for which no application had been made to amend? The public interest disclosure issues were omitted, and application would be made to add the other matters.
  - 7.16. But why was there no formal application to amend today? The focus was on the issues for today.
  - 7.17. As this was no answer, I pointed out that the question had not been answered, and that he had said that he had the information to put in the application, so that if all he wanted was dates to put in he could have prepared it and left the space for the dates in square brackets. Mr Ezike agreed this would have been better.
  - 7.18. I asked about the overriding objective. Mr Ezike did not think there had been a total failure to abide by it but accepted that it was not totally met by the Claimant.
8. I decided to strike out the entirety of the claim, applying Rule 37, which says:

**Striking out**

**37.—(1)** At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—

- (a) that it is scandalous or vexatious or has no reasonable prospect of success;
- (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
- (c) for non-compliance with any of these Rules or with an order of the

Tribunal;

(d) that it has not been actively pursued;

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

(2) A claim or response may not be struck out unless 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.

9. I considered carefully the guidance of the Employment Appeal Tribunal in many cases not to strike out discrimination claims save in the clearest of cases, taking the claim at its highest.
10. I decided that the conduct of the Claimant was unreasonable, that the Claimant had not complied with Orders of the Tribunal, and that the claim had not been actively pursued, and was still not being actively pursued.
11. I decided that the failures were sufficiently bad, over an extended period, with no explanation that I should grant the Respondent's application to strike out the claim.
12. The reasons I so decided were as follows:
  - 12.1. I accept the submissions made by the Respondent in the letter quoted above.
  - 12.2. The Claimant had failed to respond to correspondence from both the Tribunal and the Respondent for a period of some three months. The correspondence from the Claimant had been very limited. It was not that the file had slipped from view, for the email sent to the Respondent by Mr Ezike on 06 August 2024 promised a response within a few days, but there was none.
  - 12.3. The letter from the Tribunal at the instigation of EJ Iman stated very clearly that if, prior to this hearing, there was no clear explanation of the lack of action the claim consideration would be given to striking out the claim, and there had been no explanation provided, before or at this hearing, even after that very clear letter. (There is, in fact, no adequate reason for the inactivity.)
  - 12.4. The explanations today were no explanation at all and were contradictory. Mr Ezike was both in a position to file an application for amendment now and required more detail before he could do so.
  - 12.5. Mr Ezike said the information required was all from the Claimant, and there was no accounting for why either he had not asked the Claimant or why the Claimant had not responded.
  - 12.6. The main plank of the claim as pleaded in box 8.2 had no merit, as the Claimant was withdrawing it.
  - 12.7. The claims it was said the Claimant sought to add were out of time

when the claim was filed and were even more so now. There was no merit in the argument that they were relabelling as they were of a very different nature.

- 12.8. There was still no schedule of loss despite the clear Tribunal order that it be provided and there was no good reason for that. If it was provided and needed updating, then it could have been updated.
- 12.9. The claim was not being actively pursued and that remains the case today, for although Mr Ezike and the Claimant attended this hearing, the position remains the same: the Claimant says that he is going to apply to amend his claim but has not done so.
- 12.10. At the very last minute, only just over half an hour before the hearing, an agenda and a list of issues was provided. The objections of the Respondent to these documents are sound objections. It is particularly egregious to tender to the Tribunal a list of issues setting out claims that are not pleaded, and for which no amendment application had been made.
- 12.11. The Claimant has signally failed to comply with the overriding objective:

**Overriding objective**

**2.** The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

- (a) ensuring that the parties are on an equal footing;
- (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;
- (c) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (d) avoiding delay, so far as compatible with proper consideration of the issues; and
- (e) saving expense.

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.

- 12.12. This has wasted, and will continue to waste, a lot of Tribunal time and has caused unnecessary expense to the Respondent. This prejudices other parties who seek to conduct their claims and responses professionally but must wait a long time (sometimes years in this Tribunal) for a hearing.
- 12.13. This hearing today will not be able to achieve anything productive and in the absence of any coherent or candid explanation of the



reasons for inactivity I have no confidence that matters will improve.

- 12.14. The Claimant has failed to comply with Tribunal orders over an extended period despite helpful prompting by the Tribunal and by the Respondent and I do not consider that an Unless Order is appropriate both because the application to strike out is so strong and because I have no confidence that the Claimant would comply with it.
13. The Respondent did not make an application for costs today but is to consider whether to do so after considering this judgment.

**Employment Judge Housego**  
**Dated: 23 August 2024**