



EMPLOYMENT TRIBUNALS

Claimant: Ms M Townsend

Respondent: Portsmouth City Council

Heard at: Bristol (remotely by CVP) **On:** 27 February 2025

Before: Employment Judge Leverton (sitting alone)

Appearances

Claimant: No appearance or representation

Respondent: Mr Wesley Potterton, counsel

PRELIMINARY HEARING IN PUBLIC JUDGMENT

The claim in respect of data protection/subject access is struck out under rule 38(1)(a) of the Employment Tribunal Procedure Rules 2024 because it has no reasonable prospect of success.

The remaining claims are struck out under rule 38(1)(c) of the Employment Tribunal Procedure Rules 2024 because the Claimant has not complied with an order of the tribunal, or alternatively under rule 38(1)(d) because they have not been actively pursued.

REASONS

1. I gave brief oral reasons for my decision at the hearing, but the Claimant did not attend, so I will set out my reasons in writing so that she can understand why her claims have been struck out.
2. By a claim form presented on 4 November 2023, the Claimant brought a complaint of disability discrimination. The details of that complaint, in so far as they could be discerned from the contents of the claim form, were set out in the case management order of EJ Ferguson sent to the parties following a preliminary hearing for case management on 9 October 2024.

3. The case management hearing had originally been listed for 28 May 2024, but at the Claimant's request it was postponed twice for health reasons. A request for a third postponement was refused by Regional Employment Judge Pirani, who noted that there had already been two postponements. He took the view that the Claimant had not provided evidence that she was medically unfit to attend a short telephone hearing. She had indicated that she was in the process of arranging legal representation, but he did not regard the fact that she was unrepresented as a good reason to postpone.
4. The case management hearing went ahead on 9 October 2024 in the Claimant's absence. The Claimant provided further medical evidence on the day before the hearing, but it was still not sufficient to show that she was too unwell to attend. EJ Ferguson discussed the issues with the Respondent and recorded that the Claimant appeared to be pursuing complaints of disability-related harassment and failure to make reasonable adjustments. A one-day public preliminary hearing was listed to take place on 17 February 2025; this was a typographical error and the tribunal subsequently advised the parties that the hearing was in fact listed for 27 February 2025, i.e. today.
5. The purpose of today's hearing was stated by EJ Ferguson to be as follows:
 - a. to determine any application to amend the claim;
 - b. to clarify the complaints and list of issues;
 - c. to determine whether the claim or any part of it should be struck out on the basis it had no reasonable prospect of success;
 - d. to determine whether a deposit order should be made in respect of any complaint or allegation on the basis it had little reasonable prospect of success;
 - e. to discuss the Claimant's health and, in particular, whether she would be able to attend the final hearing and give evidence, whether any adjustments were required and, if the Claimant was unlikely to be able to attend, whether the claim should be struck out on the basis that a fair hearing was not possible;
 - f. to discuss case management generally, including whether the provisional listing of the final hearing for 16–19 June 2025 was appropriate, further orders relating to preparation for the final hearing, and whether the parties were interested in an offer of judicial mediation being made.
6. EJ Ferguson also made various case management orders, the effect of which can be paraphrased as follows:
 - a. if the Claimant wished to amend her claim, she must make an amendment application by 20 November 2024 (para 13 of the order);
 - b. by 20 November 2024, the Claimant must:

- i. confirm whether the complaints relating to data protection were pursued and, if so, on what basis she contended that the tribunal had jurisdiction to consider them
 - ii. state what reasonable adjustments the respondent should have made, and
 - iii. provide further details of any allegations of disability-related harassment (para 14 of the order);
 - c. by 20 November 2024, the Claimant must provide a schedule of loss (para 15 of the order);
 - d. by 4 December 2024, the parties must give mutual disclosure of documents relevant to the substantive issues in the case (para 18 of the order).
7. EJ Ferguson's case management order was sent to the parties on 25 October 2024. On 17 January 2025, the Respondent emailed the tribunal, copying in the Claimant, noting that the Claimant had not complied with any of the above directions and that there had been no further correspondence or contact from her. The Respondent accordingly applied for the claims to be struck out under rule 38(1)(c) and (d) of the Employment Tribunal Procedure Rules 2024 on the basis that the Claimant had failed to comply with an order of the tribunal and/or that the claims had not been actively pursued. It requested that its strike-out application be considered at this public preliminary hearing.
8. On 11 February 2025, the Claimant emailed the tribunal forwarding correspondence with the Information Commissioner's Office (ICO). Her email was headed 'Strike out application and request for clarification'. She did not copy in the Respondent, despite the Respondent having previously reminded her that it should be copied in whenever she wrote to the tribunal.
9. In her forwarded email correspondence with the ICO, the Claimant indicated that she had sought various documents from the Respondent by way of a subject access request, including emails between herself and her manager; that the Respondent had not provided full disclosure; and that she needed the information in connection with her employment tribunal claim. Her covering email to the tribunal stated: 'I have been delayed [in] submitting my evidence due to my SAR request still outstanding from 2 years ago. PCC have failed numerous... times to provide me with emails I have requested from names I have given to help make SAR request easier. I logged a formal complaint with ICO and they have now recorded [an] infringement... I would like to hope that you are able to seek compensation for me in with regards for the SAR request not being handled correct and withholding information to me, and end the horrific nightmare I have endured.'
10. In so far as this was a belated attempt to explain the Claimant's failure to comply with EJ Ferguson's case management orders, I do not accept that it amounts to an adequate explanation or even addresses the relevant issues. The Respondent's position is that it has complied with the Claimant's subject access request and that the additional documents that

she seeks are under the control of her trade union representative, so any request for subject access ought to be directed to the trade union. But even if the Respondent has failed to provide all relevant documents to the Claimant, in my view it should still have been possible for the Claimant to explain in broad terms what conduct is said to have amounted to disability-related harassment, and what adjustments the Respondent ought reasonably to have made to accommodate her disability. Furthermore, it is unclear why she could not have provided a schedule of loss or disclosed any relevant documents in her possession (or, if there were none, said so). The ICO complaint is a separate matter that falls outside the jurisdiction of this tribunal. It does not explain the Claimant's non-compliance with EJ Ferguson's orders or her apparent disengagement from the tribunal process.

11. The Claimant did not attend today's hearing. She offered no explanation for her non-attendance and there was no postponement request. Shortly after 10am, the clerk attempted to contact her by telephone, but the call went through to voicemail. The clerk then sent her an email. There was no response, and the hearing went ahead in the Claimant's absence.
12. In support of the strike-out application, Mr Potterton provided written submissions, which he amplified at the hearing. I accept his submissions. The Claimant has failed to comply with any of EJ Ferguson's case management orders. She has not produced a schedule of loss or disclosed any of the documents that she intends to rely on. I note that there appear to have been failings by the Respondent as well, in that it provided disclosure in the form of a list of documents without also sending copies to the Claimant, and it missed the 4 December deadline by several weeks. Furthermore, the documents disclosed by the Respondent appear to relate only to this preliminary hearing, and not to the substantive issues in the case. However, these apparent failings have no bearing on the Claimant's non-compliance. If the Claimant has concerns about the Respondent's conduct of the proceedings, and particularly the disclosure process, she should have attended today's hearing to raise the matter and seek an appropriate order.
13. More significantly, the Claimant has not complied with the order to specify what reasonable adjustments the Respondent should have made, or what acts she relies on in support of her claim for disability-related harassment. This means that essential elements of her disability discrimination claims are missing. Her claim form states that she was 'hounded' during her sick leave, but it is unclear when, or by whom, or by what means she alleges that this happened. She does not state what reasonable adjustments she thinks the Respondent should have put in place. Even if the Claimant lacked copies of certain emails, she could at least have provided a broad outline of her allegations, with approximate dates or time periods, and named the individuals involved. As a result of her failure to do so, the Respondent does not know what is being alleged and cannot sensibly respond to the claims, and I am unable to finalise the draft list of issues in preparation for the final hearing.

14. I also note that the Claimant did not contact the Respondent or the tribunal to seek an extension of time or to explain why she could not comply with EJ Ferguson's directions, or when she would be able to do so. Her email of 11 February 2025 was sent months after the deadline for compliance. The Respondent was not copied in, and for the reasons given above I do not consider that it constitutes an adequate explanation, even assuming it was intended as such.
15. Furthermore, there has been a pattern of conduct which leads me to conclude that the Claimant is not actively pursuing her claims. She sought three postponements of the case management hearing, and she failed to attend the hearing on 9 October 2024 following the Regional Employment Judge's refusal to postpone it for a third time. The medical evidence that she provided was insufficient to explain her non-attendance. She has failed to comply with case management orders. She did not attend today's hearing and she has failed to offer any explanation for her absence or to request a postponement.
16. I am satisfied that the Claimant has been afforded a reasonable opportunity to make representations concerning the Respondent's strike-out application, as required by rule 38(2) of the Employment Tribunal Procedure Rules 2024. The tribunal emailed her on 24 January 2025 inviting her to comment on the Respondent's application. The Claimant was aware that the strike-out application would be considered at today's hearing, but she did not attend or make written representations, apart from her email of 11 February 2025, the contents of which I have already addressed.
17. Even if there are grounds to strike out a claim, it does not follow that the claim should automatically be struck out: I have a discretion in that regard. Strike-out is a draconian option, but I have concluded that it is the appropriate course of action here. The original case management hearing was postponed twice. It finally took place in the Claimant's absence, and EJ Ferguson went to considerable lengths to ascertain the claims that were being brought. The Claimant was then given the opportunity to amend her claim and was ordered to provide further information. She breached EJ Ferguson's case management orders. She did not attend today's hearing, and she has made no written representations concerning the strike-out application. The only correspondence received by the tribunal is her email of 11 February 2025, which does not address the relevant issues. There has been a pattern of persistent non-compliance and non-engagement over a period of many months. In these circumstances, the prospects of the matter progressing to a final hearing appear to be remote.
18. I have concluded that it is appropriate to strike out the Claimant's disability discrimination claims under rule 38(1)(c) of the Employment Tribunal Procedure Rules 2024 because the Claimant has not complied with an order of the tribunal, or alternatively under rule 38(1)(d) because the claims have not been actively pursued. If I had not struck out the claims under rule 38(1)(c) and (d), I would have accepted Mr Potterton's submission that the claims as pleaded stand no reasonable prospect of success and should be struck out under rule 38(1)(a).

19. The Claimant did not respond to the tribunal's request to clarify whether her data protection/subject access claim is being pursued or withdrawn. In so far as she wishes to bring a claim in respect of data protection breaches and/or subject access rights, that is not a matter over which this tribunal has jurisdiction. The claim is accordingly struck out under rule 38(1)(a) of the Employment Tribunal Procedure Rules 2024 because it has no reasonable prospect of success.

Employment Judge Leverton

7 March 2025

JUDGMENT SENT TO THE PARTIES ON
24 March 2025 By Mr J McCormick

FOR EMPLOYMENT TRIBUNALS

Notes

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www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/