Neutral Citation Number: [2025] EAT 65

Case No: EA-2023-001354-AT

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 13 May 2025

Before :

JUDGE STOUT

- -

Between :

PP

Appellant

- and -

GG Limited

Respondent

- -
- -

The **Appellant** did not attend
Oliver Lawrence (Counsel) (instructed by **Knights PLC**) for the **Respondent**

Hearing date: 1 May 2025

- -

JUDGMENT

SUMMARY

PRACTICE AND PROCEDURE (8)

At the start of what was supposed to have been the final hearing in the Employment Tribunal in these proceedings, the respondent attended having made a prior written application to strike out the claim because the claimant had failed to produce a witness statement or to engage with other case management directions, while the claimant attended with a 25-page written application to strike out the response on a multitude of grounds. The Tribunal refused the respondent's prior application, but suggested that, if allegations made in the claimant's strike-out application were unfounded, the respondent may apply to strike out the claim on the basis that the claimant had conducted proceedings unreasonably, scandalously or vexatiously by making unfounded allegations. The respondent then did make that application. The Tribunal dismissed the claimant's strike-out application, but allowed the respondent's.

Held:- The Tribunal had erred in law: (i) by failing to take account of certain relevant factors relied on by the claimant; (ii) by perversely deciding that the claimant's making of unfounded allegations made a fair trial impossible; and (iii) because the combination of the Tribunal having suggested the application to the respondent and then gone on to uphold it on that same basis, together with the other weaknesses in the Tribunal's reasoning, gave rise to material unfairness and/or an appearance of bias.

JUDGE STOUT:

Introduction

1. The appellant was the claimant in the proceedings before the Employment Tribunal, and I will refer to her as such. She appeals from a judgment of the Reading Employment Tribunal striking out her claims in their entirety.

2. The appeal was initially stayed to allow the judge who presided at the hearing the opportunity to comment on the grounds of appeal. Following the stay, permission to appeal was granted on the paper sift on all grounds by Jason Coppel KC, Deputy Judge of the High Court.

The claimant's non-attendance at the Employment Appeal Tribunal hearing

3. In advance of the final hearing of this appeal, the claimant made applications for anonymity and for the hearing to be postponed. I made a temporary anonymity and restricted reporting order, but refused the applications to postpone the hearing for reasons that were given in those orders. I urged the claimant to attend the hearing, suggesting adjustments that could be made to facilitate her attendance, including attendance by video or in person (with or without a screen to enable her to avoid the respondent's representatives) and with a friend if she wished. Alternatively, I offered her the opportunity to provide written submissions or rely on the materials she had already put in writing.

4. The hearing was due to start at 10.30am. The claimant was not present at that time. Telephone calls were made to her, but there was no response. No email had been received from her. I heard representations from the respondent who submitted that I should proceed with the hearing in her absence.

5. I decided that it was appropriate to do so and the hearing proper accordingly commenced around 11am without the claimant. The respondent was represented by counsel and solicitor. I indicated I would provide my reasons for proceeding in the claimant's absence in writing in this reserved decision.

6. The basis for the claimant's postponement application that I previously refused was contained in a letter that is on the headed notepaper of a GP practice. It reports that she is suffering from mental

ill health, in part as a result of the Employment Tribunal's refusal of her request for anonymity (in respect of which the claimant launched a previous unsuccessful appeal). It states that the claimant is currently unable to participate in proceedings and will not be unless anonymity is granted and even then not within seven to nine months at the earliest.

7. As I explained to the parties in my orders prior to the hearing, the difficulty with the anonymity request is that the Employment Tribunal refused her application in that respect and so its judgment was published online in October 2023, and her appeal against that decision was refused in November 2024. I am not dealing with that appeal, which is at an end. I cannot on this appeal change that position. Insofar as the claimant's application for anonymisation of those previous decisions is predicated on new medical evidence as to the current and ongoing impact on her of those decisions not being anonymised, she must start by applying to the Employment Tribunal to ask it to reconsider its decision on the basis of her new medical evidence.

8. I do not consider it to be appropriate to delay the hearing of this appeal to allow the claimant time to make any such reconsideration application to the Employment Tribunal. The reality is that the claimant's concern about anonymity in relation to the Employment Tribunal decision is one she has lived with now for over 18 months and it is separate and distinct from this appeal.

9. What I can do, and did do, in advance of this hearing was to grant a (temporary) anonymity and restricted reporting order for the claimant in respect of this appeal on the basis that I was prepared to accept the claimant's own report and medical evidence that her concern about anonymity was such that without an order she would be unable to attend this hearing and thus that her access to justice would be impaired. The effect of that was, it seemed to me, to 'hold the ring' so that the claimant could deal with this appeal without making the position in respect of anonymity any worse (from her perspective) than it is already.

10. Unfortunately, even though I made that order, the claimant did not attend the hearing. I considered, however, that she had had a reasonable opportunity to attend, not only because she had had ample notice of the hearing, but also because I had made the temporary anonymity order, and

offered adjustments to the hearing format. I acknowledge that her doctor's letter (and her own correspondence) refers to difficulties in preparing for the hearing, but my assessment of the position was that the claimant ought to have been able to attend the hearing. Grounds of appeal in her case were prepared by counsel, and were detailed, so the basis for her appeal was clear. Little preparation was required by her for the hearing. She herself had managed in the weeks before the hearing either to write lengthy documents about the appeal or to get unidentified people that she refers to as "litigation friends" to write those documents on her behalf. An email she wrote the day before the hearing inviting me to reconsider my refusal to postpone the hearing actually included substantial written submissions about why the appeal should be allowed. It was my assessment, therefore, that, despite what she had reported to her GP, and her GP's view, she ought reasonably to have been able to participate in the hearing with some or all of the adjustments I suggested, or she could have made written submissions. I also considered that the volume of written materials that I already had from the claimant meant that I was in a good position fairly to determine her appeal without hearing oral submissions from her if I needed to.

11. I noted that there had already been a substantial delay for the parties since the hearing before the Employment Tribunal in this matter, and that every wasted hearing day in the EAT increases the delays for other parties in getting their cases heard. I did not consider there was sufficient prospect of the position regarding the claimant being significantly different at any postponed hearing in seven or more months' time. The GP's prognosis in that respect was expressed in doubtful terms, and I noted that something of a pattern was developing because the claimant had attended the Employment Tribunal hearing armed with medical evidence to the effect that she was not fit for that hearing. In short, I did not consider delaying the appeal to be in anybody's interests or in accordance with the overriding objective. I therefore proceeded with the hearing in her absence.

12. The hearing concluded at about 12.25pm and I reserved judgment.

The claimant's post-hearing application and anonymity

13. Following the hearing, the claimant, or persons purporting to act on her behalf, made a further application. I have dealt with this on the papers in a separate order. For the reasons given there, I decided it was appropriate to continue with the promulgation of this reserved decision. I also decided for the reasons given in that separate order that it was appropriate to make a permanent anonymity order in this matter.

Background and the Employment Tribunal's decision

14. All that need be said for present purposes about the nature of the claimant's claims in these proceedings was captured in the first two paragraphs of the judgment under appeal. In short, between December 2021 and January 2022 the claimant was either (on her case) employed by the respondent or, on the respondent's case, engaged in negotiations to be employed by them. She brought claims that she was dismissed or otherwise subjected to detriments for having made protected disclosures, and also claims of victimisation, race discrimination and money claims.

15. A 5-day final hearing of the claims was due to start on 25 September 2023, but was put back by the Tribunal to start on 26 September 2023 (apparently owing to lack of judicial resource). In advance of that hearing, the parties had (putting it neutrally) not agreed a bundle and the claimant had not provided a witness statement.

16. On 22 August 2023 the respondent had made an application in writing to strike out the claimant's claim or for an unless order in relation to her failure to provide a witness statement, which should have been provided as ordered by 21 August 2023.

17. In emails of 14 and 21 September 2023 the respondent essentially repeated the strike out application on the basis of non-compliance with tribunal orders, the claim not being actively pursued and it being no longer possible to have a fair hearing. The claimant did not respond to those applications.

18. On 21 September 2023, the respondent provided its own witness statements to the Tribunal and the claimant.

19. The hearing began on 26 September 2023. The claimant attended the hearing, but with medical evidence stating that she was not fit to attend and a 25-page written application to strike out the respondent's response on multiple grounds, including unreasonable conduct, breach of Tribunal orders and it being no longer possible to have a fair trial. The allegations included that the respondent had concealed evidence, destroyed evidence, had harassed her through correspondence, that the respondent's solicitor was set on inducing the claimant to have a nervous breakdown and had detrimentally affected her mental health, that the respondent had breached her personal data rights, and hacked her social media accounts, that the respondent had influenced her eviction from her home (for which the claimant produced evidence of a WhatsApp message from someone said to be the landlord's personal assistant), and had previously in 2022 'lured' the claimant to Ukraine before its invasion by Russia in order to 'trap' her there.

20. The Tribunal in its judgment records that the parties were in agreement that a fair trial was not possible within the trial window ([10]), but "the circumstances that had led to that, and the question of whose fault it was, were hotly disputed".

21. However, the Tribunal was of the view that the claimant's failure to produce a witness statement did not mean that a fair trial was not possible; the Tribunal observed that the hearing could continue without evidence from the claimant ([17]-[18]). The Tribunal therefore refused the respondent's strike-out application on the basis that it had been advanced in writing prior to the hearing.

22. The Tribunal hearing was not recorded by the Tribunal Service, but was recorded personally by the judge, who was therefore able to provide the following information / transcript as to what happened at the start of the hearing. Mr Lawrence confirmed at this hearing that the judge's notes and transcript are agreed.

23. The claimant had at the outset of the hearing explained that she was unwell and had attended against the advice of her psychiatrist and GP. She made an application to record the hearing, which was refused.

24. The judge's transcript of what happened next is as follows:-

R Judge, it appears the claimant does not object to you hearing our strike out application today and for the sake of making some progress with the preliminary issues the respondent requests the tribunal determine both applications today if that pleases the tribunal. Going forward we are where we are. I imagine the tribunal will be minded to take the lunch break at some point soon. Of course I am prepared to make my submissions which will not take very long. Of course you have my written strike out application. I can make my submissions to support our application now if you wish.

EJ Well, I am almost more concerned about your response to the claimant's application than I am about your application as a whole Mr Lawrence because she says some fairly startling things and not the first time you have heard things like this but it seemed to me that there may be issues that were new to you here particularly things about the involvement of the respondent in the loss of her tenancy. If we were to take the view that the respondent had had a hand in the loss of the claimant's tenancy that seems to be quite a strong point in the claimant's favour and I was not sure if you were in a position to deal with that today?

R Judge I think that given our position is simply that this is nonsense and we deny it it is not clear how much more I can elaborate in respect of addressing that particular.

EJ We seem to have evidence in the form of an email from somebody or a WhatsApp message from someone called Kate that it was your client's responsibility. Now it might be that you are prepared to go ahead on the basis that that abstract WhatsApp message proves nothing but if we are to be enquiring into the degree of behaviour I would have thought we. I mean, frankly the problem here is that if things are as the claimant sees it then we are into territory of strike out but if she is saying these things and they are not true then we are almost into the territory of striking out the other way around aren't we?

R Yes

EJ It is hard to see how we can have a fair trial in this case and I think both sides agree broadly on that but fingers are pointing as to whose fault that is, so if we find that the

claimant has made her application to strike out and essentially she has completely mischaracterised things and got it completely wrong I can anticipate that you yourself will be saying that is unreasonable behaviour and

R Yes

EJ she should be struck out for that. If she hasn't mischaracterised it and she is completely right there are some points for your client to answer I suspect. You see I can't see too far into the future but at the moment it seems to me quite possible that this claim will be determined by virtue of one or other application to strike out, and I can see we've got your application to strike out on the basis that there is no witness statement.

R Yes

EJ Well, you'll be aware the usual answer to that is we go ahead but there is no witness evidence from the claimant, but the claimant has raised the stakes if I can put it like that now by the allegations she is making against you. Now, you may tell us that it is all nonsense but where does that leave you if we decide well there is evidence here, there are doctors saying the respondent is trying to kill her?

R I understand judge. I think

EJ You can ask questions about that but it appears for whatever reason you are not going to be in a position to cross-examine the claimant.

R No

EJ I mean, the application is quite startling. If it is true it provides material on which the claim [sic–it seems this should be the response] could be struck out. I am just wondering if you saying this is all ridiculous is quite the response that it needs.

R Yes. Understood judge. Of course the application is startling but it only startled us to some degree because we have seen similar things. I hear what you say judge. In that case I think I would need, appreciate, perhaps a lunch break.

EJ We will take our lunch break now. There is a lot going on here Mr Lawrence. Yes, [Ms PP]?

C I would like my application to be decided on today.

> EJ All right. We will have a think about what we do about that when we come back at 2 o'clock, but we will have our lunch break now until 2 o'clock. Thank you.

25. As can be seen from the transcript, the respondent's counsel's initial submission regarding the claimant's strike out application was that it was "nonsense" and he was planning to make the simple strike-out application heralded in the respondent's written applications prior to the hearing. The judge suggested that the respondent might see the claimant's application as being unreasonable behaviour and that the respondent might apply to strike her out on the basis of that. The respondent's counsel explained that the respondent had not seen the claimant's application as so startling because they have 'seen similar things', but that he 'heard what the judge said' and would appreciate a break.

26. After the lunch break, the respondent then did make an application to strike out based, as the judge had suggested, on the appellant's conduct in making the strike-out application.

27. The Tribunal went on to consider both the claimant's and the respondent's applications. It decided, in summary, that the claimant's application was baseless and that her behaviour in making "such unwarranted and unjustified accusations against the respondent and its representative is unreasonable, scandalous and vexatious" ([87]).

28. At [30]-[39] it addressed the claimant's contention that the respondent had played a part in her eviction. It decided on the balance of probability that the respondent was not responsible for the eviction. It considered that the WhatsApp message from "Kath" relied on by the claimant was not credible evidence of that given the redactions to the document and absence of supporting oral evidence from "Kath" or further evidence as to her identity.

29. At [40]-[45] the Tribunal concluded that the respondent's correspondence with the claimant had not been unreasonable or excessive so as to amount to harassment.

30. At [46]-[48] the Tribunal concluded that the respondent had not applied redactions to bundles in order to spite the claimant and breach her personal data, in part because the claimant had failed to identify any specific instance of the same.

31. At [49]-[52] the Tribunal rejected the claimant's allegations of harassment / cyberstalking and

breaches of privacy. Although the respondent had obtained a post from her LinkedIn account that could only be seen by "1st degree" contacts, and the respondent's solicitor, was not a "1st degree" connection, the Tribunal held that the post must have been obtained by someone else and passed to the respondent rather than obtained by hacking.

32. At [53]-[56], the Tribunal decided that the respondent had not concealed relevant evidence, but had engaged in appropriate correspondence with the claimant about the bundle.

33. At [57]-[58] the Tribunal decided that it was unable at this stage to determine whether the respondent had destroyed relevant evidence in the form of an email of 20 December 2021 or whether that email had been fabricated by the claimant.

34. At [59]-[60] the Tribunal decided that disputes about the contents of the bundle did not go outside the norm and had not prevented the claimant from preparing her own witness statement. It rejected the claimant's contention that material produced as part of a DSAR should have been included in the bundle as a matter of course.

35. At [62] the Tribunal concluded that the respondent's failure to provide a chronology and cast list on 4 September 2023 in accordance with the Tribunal's order was 'utterly trivial'.

36. As to the claimant's medical evidence, the Tribunal at [63]-[74] discussed the claimant's evidence, which it describes as 'remarkable'. It notes the respondent's position that it has 'been at least altered if not entirely created by the claimant' ([72]) and itself considered that 'doubt' has been cast on the medical evidence, but did not accept the respondent's submission that it was fake or forged.

37. At [75]-[80], the Tribunal gives itself self-directions as to the law in relation to strike-out.

38. At [81]-[82] the Tribunal concluded that the claimant had not shown that the respondent or its representatives had behaved scandalously, vexatiously or unreasonably or otherwise made it impossible to have a fair trial.

39. At [83]-[91] the Tribunal addressed the respondent's strike out "as developed during the hearing". This section is the heart of the Tribunal's decision and I set it out in full:

> 83. We have set out above why the respondent's original application could not

succeed – but the application as developed during the hearing is a different matter altogether. It relies almost entirely on the claimant's strike out application. The respondent's argument is that making the serious allegations the claimant has made without any proper basis is the latest and most serious example of unreasonable (perhaps scandalous and vexatious) conduct of the litigation by the claimant. It has made a fair trial impossible and should lead to the striking out of the claimant's claim.

84. The first point to make is that we do not accept any general proposition (nor do with think it was argued by the respondent) that a failure by a claimant to justify allegations of improper behaviour by a respondent should automatically lead to some sort of reverse strike-out. It is not inherently unreasonable, scandalous or vexatious to make allegations that are ultimately found by the tribunal to be not made out.

85. But we are in very different territory here. Even making allowance for a degree of rhetorical hyperbole the claimant has expressed herself in the most extreme terms. The essence of her strike out application was that the respondent and its representative were actively seeking to harm her physical and mental health, going so far as to ensure her eviction from her home and (to take wording from the medical evidence she submitted) endangering her life. On analysis we have found no proper basis for such accusations. An unrepresented claimant may not know of the norms and typical practices encountered in preparing an employment tribunal claim, but even making allowances for that we can see no justification for the claimant's accusations.

86. This is not the first time that accusations of this nature have been made without any proper basis. The claimant has stuck to her accusations after hearing the explanations and counter-arguments made by Mr Lawrence.

87. We have no doubt that the claimant's behaviour in making such unwarranted and unjustified accusations against the respondent and its representative is unreasonable, scandalous and vexatious.

88. Where, then, does that leave the prospect of a fair trial?

89. The respondent and its solicitor are now faced with continuing to defend a claim from a claimant who has made the most extreme accusations against them, without any justification. Even given the duty of co-operation it is often the case that parties (and their representatives) have to accept a degree of conflict and difficulty in preparing for a hearing – but what has occurred here is of an entirely different magnitude to the normal friction of litigation. The respondent's solicitor has faced extensive unwarranted accusations affecting her personal and professional integrity, including that she had a "clear goal to bludgeon poor claimant to death with excessive stress". The respondent has faced accusations that it has gone so far at to secure the claimant's eviction.

90. We do not consider that a fair trial can take place in the aftermath of such extraordinary and unjustified accusations. There has been no suggestion that the claimant's behaviour will change. The strike out application is simply the culmination of lesser accusations previously made by the claimant. The respondent's legal representatives will be conducting the litigation in the shadow of and under threat of what further accusations they may be subject to by the claimant. Witnesses called by the respondent at any final hearing are liable to be subject to questions from the claimant about, for instance, her eviction. We do not consider that any party should be expected to litigate under these conditions. The claimant's baseless accusations amount to unreasonable, vexatious and scandalous conduct that have rendered a fair trial no longer possible.

91. In those circumstances it seems to us that a strike out of the claim must follow. We do not see any realistic alternatives. This is not a case in which failure to prepare for a hearing could be dealt with by, for instance, an unless order. There is no part of the claimant's claim that could be struck out by itself without the respondent still having to face the claimant at a final hearing. Costs sanctions would not address the underlying problem. We have decided that this is an

appropriate case in which to strike out the whole of the claimant's claim.

Relevant legal principles

40. Under section 21 of the Employment Tribunals Act 1996 an appeal to the Employment Appeal Tribunal lies only on a question of law. This means that the appellant must show that the Tribunal made an error of legal principle, such as misreading or mis-applying a statute or principle established by case law or giving inadequate reasons for decisions. An error of fact is not an error of law unless the First-tier Tribunal's conclusion on the facts reaches the high threshold of perversity, i.e. is one that no reasonable Tribunal could have reached if it had properly applied the law to the evidence that was before it at the hearing. (See *R (Iran) v SSHD* [2005] EWCA Civ 982 at [9]-[13].)

41. In scrutinising the judgment of the Employment Tribunal, the Employment Appeal Tribunal is required to read the judgment fairly and as a whole, remembering that the Tribunal is not required to express every step of its reasoning but only to set out sufficient reasons to enable the parties to see why they have lost or won and that no error of law has been made: cf *DPP Law Ltd v Greenberg* [2021] EWCA Civ 672 at [57]. A failure by the Employment Tribunal to mention a particular fact in its judgment does not mean it has left it out of account. That case also makes the point (at [58]) that where the Employment Tribunal has correctly stated the law, the Employment Appeal Tribunal should be slow to conclude that it has misapplied it.

42. Provided the Employment Tribunal has properly directed itself in law, a challenge to an exercise of discretion by the Employment Tribunal can normally only succeed if it can be shown that the Employment Tribunal took an improper factor into account, failed to take a proper factor into account, or reached a decision that no reasonable tribunal could have reached (*Bastick v James Lane (Turf Accountants) Ltd* [1979] ICR 778, EAT).

43. In this case, one of the grounds of appeal alleges apparent bias by the Tribunal. The overarching test for apparent bias is whether a fair minded and informed observer, having considered the relevant facts, would not conclude that there was any real possibility that the tribunal was biased (*Porter v Magill* [2002] AC 357 at [103]). In applying the "fair minded observer" test, an intense

focus on the facts is necessary as the facts and context are always critical (*Locabail (UK) Limited v Bayfield Properties Limited* [2000] IRLR 96, at [5]; *Resolution Chemicals Ltd v H Lundbeck AS* [2014] 1 WLR 1942, at 35]). The fair-minded observer is not complacent but was also not unduly sensitive or suspicious (*Resolution Chemicals* at [35]).

44. This case is concerned with a decision by the Tribunal to strike out claim under rule 37 of the Employment Tribunal Rules of Procedure. Rule 37 provides:

> "At any stage of the proceedings … 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 [a party] 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)."

45. In this case, before the Employment Tribunal and also before me, neither party has made any particular submissions as to the principles to be applied to strike outs. The Employment Tribunal directed itself as follows. Neither party suggests there was anything wrong with the Employment Tribunal's self-directions and I am content to adopt them as the relevant principles too. I add emphasis below in respect of the principles that are particularly relevant to this appeal:

> 78. Although arising in a somewhat different context, the jurisdiction to strike out a claim or response has recently been considered by HHJ Tayler in *Smith v Tesco Stores Limited* [2023] EAT 11. In that case the argument was only that the claim (not the response) should be struck out, but any references to the behaviour of

a claimant in the extracts quoted below must be taken to equally apply to the behaviour of a respondent (or their representative).

79. At para 33 he refers back to the overriding objective, and the requirement for the parties to further the overriding objective and to co-operate with each other and the tribunal. He continues:

> "36. The EAT and Court of Appeal have repeatedly emphasised the great care that should be taken before striking out a claim and that strike out of the whole claim is inappropriate if there is some proportionate sanction that may, for example, limit the claim or strike out only those claims that are misconceived or cannot be tried fairly.
>
> 37. Anxious consideration is required before an entire claim is struck out on the grounds that the manner in which the proceedings have been conducted by or on behalf of the claimant has been scandalous, unreasonable or vexatious and/or that it is no longer possible to have a fair hearing.
>
> 38. In Bolch Burton J considered the approach to be adopted in considering whether it is appropriate to strike out a claim because of scandalous, unreasonable or vexatious behaviour and concluded that the employment tribunal should ask itself: **first, whether there has been scandalous, unreasonable or vexatious conduct of the proceedings; if so, second (save in very limited circumstances where there has been wilful, deliberate or contumelious disobedience of an order of the employment tribunal), whether a fair trial is no longer possible; if so, third, whether strike out would be a proportionate response to the conduct in question.**
>
> 39. This approach was adopted by the Court of Appeal in Blockbuster Entertainment Ltd v James, [2006] EWCA Civ 684, [2006]

IRLR630, where Sedley LJ stated:

"This power, as the employment tribunal reminded itself, is **a draconic power, not to be readily exercised. It comes into being if, as in the judgment of the tribunal had happened here, a party has been conducting its side of the proceedings unreasonably. The two cardinal conditions for its exercise are either that the unreasonable conduct has taken the form of deliberate and persistent disregard of required procedural steps, or that it has made a fair trial impossible. If these conditions are fulfilled, it becomes necessary to consider whether, even so, striking out is a proportionate response."**

40. In considering proportionality the Court of Appeal noted:

18. The first object of any system of justice is to get triable cases tried. There can be no doubt that among the allegations made by Mr James are things which, if true, merit concern and adjudication. There can be no doubt, either, that Mr James has been difficult, querulous and uncooperative in many respects. Some of this may be attributable to the heavy artillery that has been deployed against him, though I hope that for the future he will be able to show the moderation and respect for others which he displayed in his oral submissions to this court. But **the courts and tribunals of this country are open to the difficult as well as to the compliant, so long as they do not conduct their case unreasonably**.

41. In Arrow Nominees Inc v Blackledge [2000] 2 BCLC 167 it was held:

55. Further, in this context, a fair trial is a trial which is conducted without an undue expenditure of time and money; and with a proper regard to the demands of other litigants upon the finite

> resources of the court.
>
> 42. Choudhury J (President) made a very important point about what constitutes a fair trial in Emuemukoro v Croma Vigilant (Scotland) Ltd [2022] ICR 327:
>
> 19 I do not accept Mr Kohanzad's proposition that the power can only be triggered where a fair trial is rendered impossible in an absolute sense. That approach would not take account of all the factors that are relevant to a fair trial which the Court of Appeal in Arrow Nominees [2000] 2 BCLC 167 set out. These include, as I have already mentioned, the undue expenditure of time and money; the demands of other litigants; and the finite resources of the court. These are factors which are consistent with taking into account the overriding objective. If Mr Kohanzad's proposition were correct, then these considerations would all be subordinated to the feasibility of conducting a trial whilst the memories of witnesses remain sufficiently intact to deal with the issues. In my judgment, the question of fairness in this context is not confined to that issue alone, albeit that it is an important one to take into account. It would almost always be possible to have a trial of the issues if enough time and resources are thrown at it and if scant regard were paid to the consequences of delay and costs for the other parties. However, it would clearly be inconsistent with the notion of fairness generally, and the overriding objective, if the fairness question had to be considered without regard to such matters."

80. We must first consider whether the conditions for striking out the claim or response have been established, and in considering this it is likely that r37(1)(b) and (e) should be considered together. **If the conditions have been established, striking out remains a matter of discretion to be exercised as, effectively, a last**

> **resort if no other remedy or sanction is appropriate**. It may be in some cases that the appropriate response is to strike out part, not the whole, of a claim or response.

The grounds of appeal

46. It is convenient to take the grounds out of order so as to deal with the appeal in a logical order and avoid repetition in the judgment.

Ground 2 – 'false dichotomy'

47. Ground 2 argues that the Employment Tribunal erred in law by approaching the strike-out applications on the basis that the claimant's application must either succeed or, if it did not succeed, her case should be struck out. The grounds, drafted by counsel, describe the Employment Tribunal's reasoning in this respect as creating a 'false dichotomy' and involving a 'non sequitur' or, simply, assert that it was an error of law for the Tribunal to treat the making of an unfounded allegation as dispositive of the question of whether there had been unreasonable conduct by the claimant.

48. The respondent submits that the Tribunal has not committed this error in reasoning and I agree. This is clear from [28] of the judgment where the Tribunal notes that there may be a *"middle ground"* that would mean that the claimant's strike-out application could fail but her own claim not be struck out as a result, although it is evident from that same paragraph that this Tribunal considered a *"middle ground"* outcome to be 'unlikely'. The Tribunal's view in this respect is a factor that has contributed to my conclusion below in relation to Ground 1, but it cannot be said that the Tribunal has committed the error in reasoning that is raised by the claimant's Ground 2. Paragraphs 84 and 85 make this even clearer where the Tribunal directs itself in its conclusions that it does not follow that because a strike-out application fails it was unreasonable conduct for the application to be made so that the result may be a 'reverse strike out'. I agree.

49. Indeed, for reasons that will become apparent in the course of this judgment, I would caution that it will rarely be the case that the failure of a strike-out application will of itself provide grounds

for striking out the case of that party who makes that application. This is because, first, it does not follow that because someone unsuccessfully alleges that the other side has acted unreasonably they have themselves acted unreasonably in making that allegation; secondly, even if it was unreasonable to make the strike-out application, the fact that a party has conducted proceedings unreasonably is never by itself sufficient to justify striking out. It must also be established that the unreasonable conduct consists of a deliberate disregard of required procedural steps, or has made a fair trial impossible, **and** strike-out must be a proportionate response. Given the draconic nature the of the strike-out power, it will only be a proportionate response to conduct that is comparably extreme. Generally speaking, the proportionate response to a failed strike-out application will merely be the dismissal of that application, potentially with costs awarded against the party who made it.

50. Ground 2 therefore fails.

51. Grounds 3 and 4 challenge the Employment Tribunal's decision that the claimant acted unreasonably in making the application, so I deal with them next.

Grounds 3 and 6 – failure to consider genuine belief

52. Ground 3 argues that the Employment Tribunal left out of account a relevant factor in that it failed to consider whether the claimant had a genuine belief in the allegations that she had made. It is submitted that this was relevant to whether she acted unreasonably in making her strike-out application. Ground 6 adds a number of specific matters that the claimant submits the Tribunal should have considered in that respect. In particular, the grounds of appeal point to the following:

a. the Tribunal should have considered whether the WhatsApp message from Kath gave the claimant reasonable grounds for her belief that her employer had something to do with her eviction;

b. the Tribunal did find that some of the documents the respondent included in the bundle contained some personal information that was unnecessary so that part of her application was not without foundation;

c. the Tribunal ought also to have appreciated that as the respondent's solicitor had taken the screenshot of the LinkedIn site, she had been viewing the claimant's page when she did not have 1st degree access;

d. the respondent had failed to include some material from the DSAR in the bundle and had thus failed to disclose in the proceedings some documents that the claimant considered relevant;

e. the Tribunal was unable to decide whether the email of 20 December 2021 had been destroyed by the respondent or manufactured by the claimant, but left that potentially very serious allegation against the respondent over for determination at a final hearing if there was one; and,

f. the respondent had failed to provide its witness statements by the deadline.

53. The respondent has a two-pronged response to this ground. First, it is submitted that the Tribunal did have regard to the genuineness (or otherwise) of the claimant's belief because at [82] it stated: *"Despite the strength of her feelings on the point, the allegations she makes against the respondent and/or its representatives are largely if not entirely baseless. Where there may be something to them (for instance as in redaction of documents for the bundle) the claimant has sought to draw unwarranted and grossly exaggerated conclusions from that"*. Secondly, the respondent submits that if allegations are sufficiently outrageous, it becomes irrelevant whether the appellant genuinely believed them or not, so there was no need for the Tribunal to consider the issue in any detail.

54. I agree with the respondent that, given what the Tribunal says at [82], it is apparent that it has not wholly left out of account the issue of the genuineness of the claimant's belief in her allegations. I also agree with the respondent that in principle it may be unreasonable, scandalous or vexatious conduct to make allegations without foundation even if the party making the allegations genuinely believes them to be true. However, I do consider that the Tribunal in this case has left some of the

relevant factors identified by the claimant in Ground 6 out of account in considering whether the claimant's conduct in making the strike-out application was unreasonable.

55. The reason that the Tribunal gives at [85]-[87] for finding her conduct in making *"unwarranted and unjustified accusations against the respondent and its representative"* to be unreasonable, scandalous and vexatious is that there was *"no proper basis"* for her allegation that the respondent and its representative *"were actively seeking to harm her physical and mental health, going so far as to ensure her eviction from her home and … endangering her life"*. Putting to one side for the moment the question of the claimant's belief that the respondent was actively seeking to harm her physical and mental health (to which I return when dealing with Ground 4 below), a central plank in the Tribunal's conclusion that the claimant's conduct was unreasonable, scandalous and vexatious was that she made an allegation that the respondent influenced her eviction from her home with *"no proper basis"*. However, the Tribunal reaches that conclusion without referring at all to the WhatsApp from Kath. The Tribunal had (reasonably) found that that WhatsApp was not sufficient to establish on the balance of probabilities that the respondent had intervened to secure her eviction, given the inherent probability of that and the redactions that had been applied to the message chain. But, on the face of it, the WhatsApp did indisputably give the claimant 'a' proper basis for making the allegation (unless it was either a forgery or in some other way contrived by the claimant, but the Tribunal had made no finding to that effect). As such, in my judgment, the WhatsApp message was a relevant factor that the Tribunal had left out of account in reaching its central conclusion that the claimant had acted unreasonably in making that allegation.

56. Grounds 3 and 6, taken together, therefore succeed to that extent.

57. As to the other factors that the claimant relied on in her Ground 6, I need not address them in any detail. They all relate to other allegations in her strike-out application which were not in the end referred to by the Tribunal in [85] of its decision and therefore do not appear to have been central to the Tribunal's decision to strike out. However, I do consider that there is merit in some of the other points the claimant makes in Ground 6. In particular, it is troubling that the Tribunal reached its

conclusion that the claimant's application had been unreasonably made given that the Tribunal itself had been unable to decide whether or not the respondent had indeed 'destroyed' a potentially important email; if that allegation were ultimately to be found proven, that would obviously also constitute a reasonable basis for bringing the strike-out application. The claimant's argument that there were also a number of documents relevant to her claim that were disclosed in response to her DSAR (dealt with by a different team at the respondent) that had not been disclosed by the respondent in the proceedings also seems to me on its face to be a point with some merit that provided another reasonable basis for the claimant's application and to which the Tribunal ought at least to have addressed its mind in its reasons.

Ground 4 – whether mental ill health a factor

58. Ground 4 argues that the Employment Tribunal erred in law in failing to consider whether the claimant's mental ill health had been a factor in her making allegations that it concluded were without foundation.

59. The respondent submits that the Tribunal has made no such error. The respondent points out that it is clear from [12] of the judgment that the Tribunal had in mind that the claimant was a vulnerable party by reason of her ill-health. The respondent further submits that none of the claimant's medical evidence suggested that she was suffering from any condition that would cause her to hold false beliefs about the respondent, or from any sort of medically-recognised paranoia or schizophrenia, or anything else that could have been properly taken into account by the Tribunal as mitigating her conduct from a medical perspective.

60. It seems to me that this is a ground that would likely have been more fully developed if the appellant had attended this hearing, or if she had been represented at the hearing by counsel who drafted her grounds (or other legal representative). As I am upholding the appeal on other grounds, it is not necessary for me to determine this ground one way or another.

61. However, I make this observation: as noted above, the Tribunal's primary basis for concluding

that the appellant's conduct was unreasonable was (at [85]) that it was unreasonable for her to have alleged that the respondent and its representative were actively seeking to harm her physical and mental health. While the Tribunal may have concluded there was no basis for the allegation that the respondent was 'actively' seeking to do any such thing, it does seem to be relevant to the reasonableness of the claimant making the allegation that, on the face of her medical evidence: (a) she did apparently have significant mental health problems and these had apparently exacerbated over the period of the litigation; and (b) she herself apparently sincerely believed the respondent was to blame for that and had repeatedly told her medical practitioners as much. In the absence of a finding that the medical evidence was forged or otherwise wholly unreliable (and there was no such finding by the Tribunal, despite the respondent's submissions to that effect), it seems to me that these were relevant matters to which the Tribunal needed to have regard in deciding whether the appellant's conduct in making the allegations was unreasonable.

62. If that was the point made by this ground of appeal, I might therefore have upheld it. However, it is not exactly what was said in the pleaded grounds of appeal, so Ground 4 as pleaded is not one of the bases on which this appeal succeeds.

Ground 5 – perverse conclusion that fair trial not possible

63. Ground 5 is that the Employment Tribunal reached a perverse conclusion that a fair trial was not possible given that the respondent had not appeared concerned by the claimant's allegations until prompted by the Tribunal to make the expanded strike out application. The grounds of appeal submit that the respondent advanced no evidence that the allegations made it impossible for them to do their jobs and professional lawyers ought generally to be able to cope with allegations of this sort being made against them.

64. The respondent submits that there was no error by the Tribunal in this respect. The respondent points out that the parties were agreed at the start of the hearing that a fair trial was not possible, so it is hardly surprising that the Employment Tribunal reached that conclusion. Mr Lawrence accepts that,

as the claimant's application was only made on the morning of the hearing, the respondent had not had a chance to put in any written evidence as to the impact of the allegations on his solicitor (or anyone else), and nor was oral evidence given, but he submits that evidence is not required in order for the Tribunal to reach the conclusions it did. Mr Lawrence submits that, although he had not gone to the hearing prepared to make the application that he did make in the afternoon, he would in the course of making the respondent's heralded strike-out application also have made submissions along the lines of the application he ended up making in the afternoon. The respondent submits that although litigators need to have broad shoulders, there is a limit to what they can be expected to put up with, and the fact that they might as professionals have been able to 'soldier on' with the trial would not mean that it was fair for them to have to do so. Mr Lawrence recalls making the submission in the afternoon that the conduct of the claimant had "created a lingering effect of intimidation and aggression that made a fair trial impossible". He submits that litigators should not have to labour under fear of what a party might do, or what they might "broadcast to others". He acknowledged that, although the claimant had made some similar allegations in the course of earlier correspondence, she had at no point been warned against making such allegations or of the potential consequences of doing so.

65. In my judgment, the Tribunal has erred in law in concluding that a fair trial was not possible in this case. The decision is perverse. I reach that conclusion for the following reasons.

66. First, it is apparent from the transcript provided by the judge that the respondent's initial reaction to the 25-page strike-out application was that it was *"nonsense"*, and not particularly startling because they had *"seen similar things"* before. It was only after the judge suggested that an application to strike out could be made based on the claimant's application that the respondent, having reflected over the lunch break, made the submission that a fair trial was no longer possible because of the allegations. The Tribunal's judgment fails to address, acknowledge or take into account this sequence of events, but it was crucial to the weight that could properly (rationally) be given to the respondent's submission that a fair trial was not possible because of the impact that the allegations

had on the respondent and its representatives.

67. Secondly, the Tribunal's decision leaves out of account the fact that it has rejected all the claimant's allegations. Normally, and particularly for a professional, any concerns they may have about continuing with a case should be fully assuaged by a judgment from the Tribunal vindicating their reputation. Although there are limits, a professional litigator normally has nothing to fear from unfounded allegations and (despite their length and detail) there was nothing in the claimant's allegations that could reasonably be regarded as taking her case outside the norm in that respect.

68. Thirdly, although it is correct that the parties at the outset of the hearing were agreed that there could not be a fair trial, the respondent's position in that respect was based on the claimant having failed to provide a witness statement. It was not the respondent's position at the start of the hearing that there could not be a fair trial because of the appellant's 'nonsensical' allegations in her strike-out application. In any event, the Tribunal itself at [18] made clear that it considered there could be a fair trial of the case without a witness statement from the claimant and in that respect it was right: in many cases, it will be possible to have a fair trial of case without a witness statement from the claimant as their evidence can be taken to be what they put in the original claim form (and potentially other documents). The principal thing that led the Tribunal to conclude at the end of the hearing that there could not be a fair trial seems to have been its own concerns that the respondent, and particularly its legal representatives, should not have to continue to defend a claim where 'extreme' unfounded allegations had been made against them.

69. However, it was not for the Tribunal to attribute its views to the respondent in that respect and, more importantly, litigators have to be broad-shouldered. Allegations of the sort that the claimant made in her strike-out application are unfortunately not uncommon. They are in many cases the product of delusion or a mental health condition (I am not saying that is necessarily the case here). Such cases require careful management in order to ensure that access to justice on the substance of a claim is not unnecessarily denied to persons who are, or may be, suffering under such a disability. In some cases, that means that one party or their representative (and often also the judge) must continue

to act or to do their job with patience, compassion and fortitude in the face of baseless allegations.

70. Of course, there are limits. A strike-out application that relies on documents that are found on the balance of probabilities to be forged may, depending on the circumstances, provide grounds for a 'reverse strike out' on the basis that a party's willingness to forge documents threatens the fairness of a trial. Repeated unwarranted referrals to a professional regulator (or threats of the same) may put a case into strike-out territory, as may allegations framed in abusive language, especially if repeated after warning(s). Likewise, a failure to accept a determination of the Employment Tribunal that a particular allegation lacks merit may mean that a fair trial really does become impossible. In most cases, though, this will not be because of the nature of the allegations themselves, but because the repetition of the conduct in the face of orders/warnings demonstrates a disregard for the Rules or the authority of the Tribunal of the sort that makes a fair trial impossible and strike out a proportionate response. However (and this is my fourth point), in my judgment it was perverse for the Tribunal in this case to conclude that limit was reached.

71. The Tribunal's chief concern at [90] appears to have been that the claimant might have continued to repeat allegations during the trial or make further allegations or that she would seek to question the respondent's witnesses about her eviction. However, the appropriate response to concerns about repetition would be to warn the claimant that allegations that had been determined to be without foundation should not be repeated and cannot be relitigated before the Employment Tribunal in the absence of a successful appeal to the Employment Appeal Tribunal or fresh evidence providing grounds for reconsideration. As to the Tribunal's concerns about questions the claimant may ask in cross-examination, again it is for the Tribunal to control cross-examination so as to confine it only to relevant matters.

72. Although there is reference to the claimant having made similar allegations in prior correspondence, she had not previously had any warning about the content of her correspondence, and it was perverse in my judgment for the Tribunal to conclude that she was likely to continue making the allegations if she was appropriately warned. Without having tried giving the claimant

appropriate warnings or guidance on cross-examination, there was simply no basis for the Tribunal's conclusion that a fair trial was not possible.

73. This point could alternatively be put in terms of it being perverse to regard it as proportionate to strike out where a warning had not been given.

74. It was perverse also for the Tribunal to regard the claimant's conduct in sticking to her accusations at the hearing notwithstanding the 'explanations and counter-arguments' made by Mr Lawrence orally at the hearing ([86]) as indicating she would not heed a warning given by the Tribunal as to future conduct. Although there will be some cases where a party will act unreasonably if they do not immediately accept the other party's submissions or evidence, those cases are likely to be rare. In most cases, a party will act reasonably in maintaining their application until the Tribunal has heard from both sides and decided the application. That is particularly the case in relation to a lengthy and complex strike-out application such as this. It was perverse to expect the claimant as an unrepresented party to give up on her arguments before the Tribunal had made a decision on their merits, and to regard her failure to do so as indicative of her likely conduct in future if she was given warning by the Tribunal about future conduct.

75. Ground 5 therefore succeeds.

Ground 1 – bias/procedural unfairness

76. Ground 1 argues that an appearance of bias and/or material procedural unfairness arises from the judge having suggested an application to the respondent and then upheld it on the basis the judge suggested at the outset. The grounds of appeal also rely on the following further matters as contributing to the appearance of bias: (i) the respondent was represented by specialist employment law solicitors; (ii) the respondent was represented by specialist employment counsel; (iii) the respondent had already made an application to strike out on notice; (iv) the Employment Judge did not consider the first application to strike out on notice to be meritorious; (v) the Employment Judge set out the basis upon which counsel for the respondent should make his second application; (vi) the

Employment Judge referred to "striking medical evidence" and "she says you are trying to kill her"; (vii) the Employment Judge went on to strike out the claimant's claim on the basis of the rationale that he had set out for counsel; (viii) the claimant was a litigant in person; (ix) the claimant had made clear that she was unfit to attend the hearing and was attending against the advice of her psychiatrist and GP; (x) the claimant's strike-out application, which was relied upon in striking out her case, was submitted, and drafted, when the claimant had been certified as being unfit to attend the hearing; (xi) the claimant had attended to respond to an application to strike out set out in writing; and (xii) the Employment Tribunal had refused to make adjustments to aid her with her concentration by allowing her to record the hearing.

77. The respondent submits that there was no bias or procedural unfairness. Mr Lawrence submits that there would have been no difficulty with the Tribunal indicating that it would consider of its own motion whether the appellant's claim should be struck out for unreasonable conduct and that it made no difference in substance that the Tribunal proposed it as an application that the respondent could consider making. The respondent submits that the Employment Judge was even-handed in setting out what the outcome of the hearing might be and that a break was given to enable both parties to reflect and prepare. Mr Lawrence emphasised that the claimant as well as the respondent had wanted both applications dealt with on the day and were in agreement that a fair trial was not possible.

78. In my judgment, what happened at the start of the hearing in this case is a scenario that is best avoided. Employment Tribunal proceedings are adversarial, not inquisitorial, and it is only in limited circumstances that it will be appropriate for a Tribunal to suggest to a party (particularly a represented party) that they may wish to make an application to strike out the other party's case on a basis that the party has not themselves identified. Although the Tribunal is free to exercise the power to strike out of its motion at any time (provided, of course, that the circumstances justify such action and it has given the parties fair opportunity to make submissions on the same), that is not what the Tribunal in this case was doing. The judge suggested to the respondent that it may wish to make an application on a basis that depended on the effect of the allegations on the respondent. Even without more, there

is a substantial risk of such action giving rise to material procedural unfairness or a perception of bias. The judge was in effect 'descending into the arena' and advising one party as to the legal options available to it. Such action may be appropriate and necessary where a party (particularly an unrepresented party) appears to be ignorant as to a potentially applicable legal principle or provision, but in this case the respondent was represented by counsel and solicitor and had attended to make a strike-out application, so it could hardly be said that the respondent appeared to be unaware of the possibility of the Tribunal exercising that power. However, I do not consider that it will always and necessarily be unfair (or give rise to an appearance of bias) for a Tribunal to do what this judge did at the beginning of this hearing. Whether it is or not in a particular case is likely to depend on what follows from it.

79. In this case, I agree that what the transcript shows the judge saying about the possible application at the start of the hearing is balanced. The judge indicates that the application may succeed or fail or that there may be a middle ground and leaves it to the parties to consider their submissions, which they then made after the lunch adjournment. What the judge says in the transcript at the start of the hearing does not expressly include any indication as to which side of the argument is more likely to succeed.

80. Nor is there any difficulty, generally, with a judge indicating to the parties a preliminary view on a matter. Indeed, fairness often requires a judge to put preliminary views to the parties in the course of a hearing so that they may have an opportunity of answering them. Nor is there anything particularly objectionable in a Tribunal describing an allegation as 'startling'. If in this case the Tribunal had gone on to consider the parties' submissions fully, fairly and to decide the applications without doing anything else that was indicative of approaching the case with a closed mind, I may not have upheld this ground of appeal.

81. However, a number of the matters on which the claimant relies under this ground, together with the weaknesses in the reasoning that I have identified in the judgment when dealing with the other grounds, in my judgment do combine in this case to give rise to an appearance of bias and/or

material procedure unfairness (bearing in mind how the two concepts may shade into each other as the Court of Appeal observed in *In re H (A Child) (Recusal)* [2023] EWCA Civ 860, [2023] 4 WLR 64). In particular, of the matters specifically relied on by the claimant in the grounds, the main factor that contributes to the unfairness or appearance of bias is the fact that the respondent was legally represented and the claimant was not as that increases the unfairness, or appearance of unfairness, of the judge 'helping' the respondent. The refusal of the claimant's application for a reasonable adjustment of recording the hearing adds something to that picture (though it would not of course provide grounds by itself). This is in particular because the refusal of the application appears to have been in part a result of the Tribunal's dismissive attitude to the claimant's medical evidence despite not having found it to be forged (see my observations in relation to Ground 4).

82. Further, what the Tribunal says about its views at the start of the hearing in the judgment at [28] is not so balanced as what it said out loud to the parties. The Tribunal says that at the start of the hearing it formed the view that: *"if the claimant's accusations were made out then we would be very likely to strike out the response, and if her accusations were without foundation we would be very likely to strike out the claim on the basis of her unreasonable, scandalous and vexatious conduct of proceedings"*. Both are strong statements to make, but what is said about striking out the claim is indicative of the Tribunal having closed its mind to the crucial questions that would arise for consideration if the allegations were unfounded, namely whether it was possible to have a fair trial and the proportionality of striking out. Whereas these crucial questions might reasonably be regarded as academic if the claimant's allegations against the respondent had succeeded, the same was not true in reverse for the reasons I have endeavoured to explain in this judgment.

83. Yet further, the impression of a closed mind is in my judgment furthered by the errors in the Tribunal's reasoning that I have identified when dealing with the grounds above. The other grounds that have succeeded have largely done so as a result of a failure by the Tribunal properly to engage with the claimant's case, and an over-eagerness to uphold the respondent in the application that the judge had suggested should be made. In short, it seems to me that the fair-minded and informed

observer would see the one-sided nature of the Tribunal's decision (as revealed through the errors I have identified above) as indicative of a Tribunal that did not approach the case with an open mind.

84. When all these factors are taken together, in my judgment, the claimant's contention that the decision was vitiated by apparent bias or procedural unfairness is made out. All the factors combine to give the appearance of a Tribunal that approached the case unfairly, without an open mind and on the basis of a predisposition as to the outcome that was not properly founded in the merits of the case.

85. Ground 1 therefore succeeds.

Disposal

86. In the light of my judgment, the case must be remitted to the Employment Tribunal on the basis that the claimant's claim has not been struck out. What happens next in the case will be a matter for the Employment Tribunal to determine, subject to any application the parties may make. Given what has happened in the course of this appeal, and for the reasons set out in more detail in the separate order dealing with the claimant's post-hearing application, the Employment Tribunal may first need to deal with the claimant's capacity to litigate and, if she (or a litigation friend acting on her behalf) makes the appropriate application, it will need to decide whether to reconsider the decision refusing anonymity.

87. The Tribunal will then need to give directions to take the claim to final hearing. Given the outcome of this appeal, it seems to me that this is a case in which it is unlikely to be appropriate for either party to repeat the strike-out applications that were decided by the Tribunal in the judgment I have considered on this appeal. The claimant's application failed for reasons that were not appealed and thus cannot be revisited. The application the respondent made in writing in advance of the Tribunal hearing failed for reasons that were not appealed and cannot be revisited. The application the respondent made at the hearing of course succeeded, but that decision has been overturned by me on appeal on grounds of perversity from which it follows that that application could not properly succeed on the basis on which it was put at the time.

Of course, if there is further unreasonable conduct by the claimant, the matters relied on by the respondent in the application that I have dealt with may be relevant to a new strike-out application based on developing circumstances. The judge and panel members who made the decision under appeal in this case should, however, not have any further dealings with this case.