



# EMPLOYMENT TRIBUNALS

**Claimant:** Melissa Creighton  
**Respondent:** Ivy Learning Trust  
**Heard at:** Watford (by CVP)  
**On:** 22 May 2025  
**Before:** Employment Judge Yardley

**Representation:**

**Claimant:** Miss N Oljelund, Solicitor Apprentice  
**Respondent:** Mr R England, Director

## JUDGMENT

**The Claimant's application to strike out the Respondent's response is refused.**

## REASONS

1. The Claimant has requested written reasons in accordance with Rule 60(3) of the Employment Tribunal Procedure Rules 2024, the following reasons are provided.
2. The Claimant applied to strike out the Respondent's response under Rule 38(1)(a) of the Employment Tribunal Rules 2024, on the grounds that it is scandalous, vexatious, or has no reasonable prospect of success. The Respondent opposed the application on the grounds that it was unable to provide a full factual reply due to the Claimant's grievance appeal being ongoing at the time

Claimant's Submissions

3. The Claimant submitted that the Respondent's Grounds of Resistance dated 2 October 2024, failed to provide a substantive response to the claims.
4. The Claimant argued that the grievance process concluded on 9 October 2024, and that the Respondent therefore had sufficient time and information to file a full response. Despite this, no amended or substantive Grounds of Resistance had been filed by the time of the application on 24 January 2025.
5. The Claimant contended that:
  - a. The Respondent is legally represented and should be held to a higher standard of procedural compliance.
  - b. The response lacked any meaningful engagement with the factual or legal basis of the claims.
  - c. The claims advanced by the Claimant are supported by detailed evidence and relate to serious allegations including discrimination arising from disability, harassment, failure to make reasonable adjustments, and victimisation.
  - d. The Respondent's failure to engage with the claims prejudiced the fair and efficient conduct of proceedings.
  - e. Striking out the response would promote fairness, avoid delay, and uphold the overriding objective of ensuring both parties are on an equal footing.

#### Respondent's Submissions

6. The Respondent objected to the Claimant's strike-out application submitting that the application was misconceived and should be dismissed.
7. The Respondent noted that at the time the Claimant's ET1 was submitted on 5 July 2024, an internal grievance process was ongoing. The grievance outcome was issued on 28 August 2024, and the Claimant submitted an appeal on 5 September 2024. The appeal outcome was not issued until 9 October 2024.
8. The Respondent's Grounds of Resistance, submitted on 2 October 2024, were expressly stated to be a protective measure due to the pending grievance appeal and that providing a full factual response at that stage risked prejudicing that process.
9. The Respondent confirmed in its original response that it would provide a full factual and legal response following the conclusion of the grievance appeal and, in any event, at least 14 days prior to any Preliminary Hearing.
10. On 30 October 2024, the Claimant applied to amend her claim to include matters relating to a disciplinary investigation. The Respondent considered it appropriate to await the conclusion of that process before filing a comprehensive response. The Tribunal issued a Notice of Claim on 23

January 2025, requiring the Respondent to file an amended response by 6 February 2025. The Respondent confirmed its intention to comply with that order.

11. The Respondent argued that:
  - a. The Claimant has not suffered any prejudice as a result of the timing of its response.
  - b. The Claimant has herself applied to amend her claim to include new factual and legal matters. The Respondent should therefore be afforded the opportunity to respond to those matters fully.
  - c. The Respondent denies that its response is scandalous, vexatious, or has no reasonable prospect of success. It submits that the Claimant's assertion to the contrary is premature, given that the full response has not yet been filed.

### Conclusion

12. Having considered the parties submissions, the Claimant's application to strike out the Respondent's response was refused for the following reasons:
  - a. At the time of filing its original Grounds of Resistance on 2 October 2024, the Respondent was engaged in an ongoing internal grievance appeal process initiated by the Claimant. The Respondent made clear that its response was submitted on a protective basis and undertook to provide a full factual and legal response once the internal process had concluded. The Tribunal accepted that this was a reasonable and transparent approach in the circumstances.
  - b. The Respondent has since complied with the Tribunal's case management order dated 23 January 2025 by filing a full amended response on 6 February 2025. The Tribunal is satisfied that the Respondent has now set out its position in full, and there is no ongoing failure to engage with the proceedings.
  - c. The Claimant has not demonstrated that she had suffered any prejudice as a result of the Respondent's initial approach. On the contrary, the Claimant herself made multiple applications to amend her claim, including to introduce new factual and legal matters. In that context, it would not be fair or proportionate to penalise the Respondent for awaiting the conclusion of internal processes before filing a comprehensive response.
  - d. The test for strike out under Rule 38(1)(a) is a high one. It must be shown that the response is scandalous, vexatious, or has no reasonable prospect of success. At the time the application was made, the Respondent had not yet had the opportunity to present its full case. In light of the amended response before the Tribunal, it cannot be said that the Respondent's case is without merit or incapable of being properly defended.

- e. Finally, the Tribunal was guided by the overriding objective under Rule 3 of the Tribunal Rules. Striking out the Respondent's response at this stage would be a disproportionate sanction and would not assist in ensuring that the parties are on an equal footing or that the case is dealt with fairly and justly. The appropriate course is for the matter to proceed to a full hearing where the issues can be properly determined on their merits.

13. For these reasons the Claimant's application was refused.

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Approved by Employment Judge Yardley

Date: 3 July 2025

JUDGMENT SENT TO THE PARTIES ON  
9 July 2025

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FOR THE TRIBUNAL OFFICE

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