



# EMPLOYMENT TRIBUNALS

**Claimant:** JS

**Respondent:** Accenture UK Limited

## RECORD OF A PRELIMINARY HEARING

**Heard at:** London Central in public **On:** 2 June 2025

**Before:** Employment Judge Forde

### Appearances

For the claimant: did not attend and was not represented

For the respondent: Ms L Bell, Counsel

## JUDGMENT ON THE RESPONDENT'S STRIKE-OUT APPLICATION

1. The application to consider dismissal of the claim would be heard in the absence of the claimant who did not attend nor provide reasons for her non-attendance.
2. The judgment of the Tribunal is that the Claimant's claim is struck out under Rules 37(1)(b), (c), (d) and (e).
3. The final hearing commencing 27 April 2026 is vacated.

## REASONS

### Applications

1. In his order dated 8 May 2025 Employment Judge Klimov of decided of his own volition to list this matter for a preliminary hearing to consider whether the claim should be struck out. Specifically, he listed this hearing to consider whether the

claim should be struck out because of the manner in which proceedings have been conducted by or on behalf of the claimant whether that conduct has been unreasonable, and/or because of the non-compliance with any of the rules with or with an order of the tribunal, and/or the claim has not been actively pursued by the claimant, and/or whether the tribunal considers that it is no longer possible to have a fair hearing in respect of the claim. It would be the position that the tribunal would go on to consider whether any further case management orders would be appropriate.

2. The reasons why the tribunal considered that there were grounds for the claim to be struck out are set out at paragraph 5 of the case management order dated 8 May 2025 and are not repeated here.
3. The claimant did not attend the hearing. By the time the hearing was due to start, the tribunal had not received anything from the claimant to explain her non-attendance. After allowing some time to allow the claimant to attend and upon not receiving a response to email enquiries as to her whereabouts, the tribunal determined that it would hear the application to strike out in the claimant's absence. The tribunal noted that in the days before the hearing the claimant had applied unsuccessfully to postpone the hearing and had also renewed the application without detailing any change in circumstances that would allow me to review the application as a fresh application. Accordingly, I determined that I was unable to deal with the application to postpone.
4. Further, in the absence any reasons for the claimant's non-attendance and having regard to the chequered history of this claim, I considered that it was entirely appropriate to proceed with the hearing in the claimant's absence. In reaching this decision, I had regard to the balance of convenience between the parties and the Overriding Objective (rule 3 of the tribunal's 2024 or "rule 3") that requires cases to be run fairly and justly so as to ensure that the parties are on an equal footing, dealing with the case in a way that is proportionate to the complexity of the dispute and the importance of the issues, being flexible with regards to procedure, avoiding delay and saving expense.
5. I found that it was important for both the tribunal and the parties and particularly the respondent who had prepared and attended for the hearing to proceed. In reaching this decision, I had particular regard to the number of previously postponed or non-effective hearings and found that further delay would lead to an inevitable escalation in time and costs and costs for the respondent and tie up more by way of the tribunal's resources including judicial time. In the round, I considered that a further postponement of an already postponed hearing would offend the spirit and intention of rule 3.

## **Background**

6. This is the third related claim brought by the Claimant against the Respondent.
7. The first claim, case number 2201908/2020 (the "First Claim") was presented on 4 April 2020. It was struck out on 7 October 2022 because of the Claimant's

unreasonable conduct, her non-compliance with Tribunal orders, and that it was no longer possible to have a fair trial.

8. The Claimant has unsuccessfully appealed that decision to the Employment Appeal Tribunal and the Court of Appeal. In upholding the strike out judgment, on 3 July 2024, HHJ Tayler observed (paragraph 10) "Employment Judge Stout considered what options there might be other than strike out but concluded that there was no realistic prospect of a fair trial taking place in the trial window that had been set. I consider that Judge Stout could easily have gone further and concluded that there was no realistic prospect of a fair trial taking place at any foreseeable point in the future". The Court of Appeal dismissed her most recent appeal on 4 April 2025.
9. The second claim, case number 2207559/2022 (the "Second Claim") was presented on 29 September 2022. It was struck out on 4 May 2023 because it amounted to an abuse of process; the claim attempted to resurrect matters already dismissed in the First Claim or fell foul of the Henderson v Henderson rule.

### **Third claim**

10. The respondent submits that the manner in which the claimant has conducted all of the litigation to date including this claim is relevant to the decision reforming today as to whether or not this claim should be struck out. Various criticisms are raised by the respondent about the claimant's conduct. The claimant's conduct is in some ways related to her health and some relating to the conduct of her claim by multiple members of her family and others.
11. This claim was presented on 24 July 2023. The details of the claim were short and contained within the ET1. The claimant's sister, AS otherwise who was recorded on the ET1 is the claimant's representative. A generic email address, used previously in the claims that preceded this claim by a number of people to communicate with the respondent and the tribunal was utilised. It is said by the respondent that that email address was used to correspond with the respondent and the tribunal on occasions with and without the claimant's instructions.
12. Following the respondent presenting its grounds of resistance on 31 August 2023, there was a case management hearing where some case management orders were made and a further preliminary hearing listed to ensure further information behind the claim was provided before further progress could be made. The next preliminary hearing was listed for 15 February 2024.
13. The claimant made an application to amend her claim on 15 October 2023. On 8 January 2024, Ani Salami provided the claimant's medical impact statement and while doing so explained that it had not been possible to get the claimant signed the updated version. This disclosure concerned the respondent because it appears it might appear that AS was acting without the claimant's instructions and that the claimant may not have had access or input into a key document relating to this claim. Later, on 8 January 2024 AS informed the respondent by

email that the claimant did not currently at that time have the requisite mental capacity and was therefore not in a position to confirm the claimant's attendance at the upcoming hearing.

14. Following concerns raised about the claimant's engagement with the claim by the respondent's representatives, the respondent sent a letter to the tribunal highlighting concerns over what appeared to be uncertainty relating to the claimant's representation, the lack of confirmation in relation to document sets have been produced on the claimant's behalf and submitted to the tribunal and the respondent, concerns over the claimant's capacity to participate in proceedings, and non-compliance with case management orders, the respondent requested that these matters of concern for within the consideration of the case management hearing listed for 15 February 2024.
15. Following an application by the claimant, case management hearing was postponed. There followed a period of communication with the tribunal from the respondent's representatives. On 23 April 2024 respondent wrote to the tribunal raising serious concerns about the claimant's failure to engage with the proceedings, lack of progress in the claim, the claimant's failure to comply with case management orders, it's concerns about who was representing the claimant, the claimant's purported lack of capacity, and the costs the respondent was incurring as a result of the claimant conduct. On 1 May 2024, EJ Brown ordered the claimant to provide written answers in response to the respondent's concerns. The answers were received from a person unknown from the generic email address referred to above.
16. In those answers, it was confirmed that the claimant still represented herself and continue to use the generic email address. It was stated that the claimant was unable to receive, manage and respond to correspondence directly and that her capacity fluctuated. This position changed and the claimant stated that she was able to represent herself by 7 May 2024.
17. On 15 May 2024 respondent made its application to strike out the claim on the basis of the claimant's purported non-compliance with tribunal orders, the unreasonable way in which the proceeds were being conducted, concerning statements about the claimant's capacity. There was a further remote case management hearing on 23 May 2024 before Employment Judge Clarke. The claimant attended and was assisted by a friend, JH. Neither appeared on camera, and JH spoke when asked to do so. The claimant typed into the chat box. No meaningful progress could be made within the claim.
18. By 3 December 2024 another person replaced JH, LT. On that day, LT wrote to the Respondent in relation to the Third Claim: "I write to inform you that I will be making an application to amend the Claimant's claim". The Respondent asked to be sent a copy in advance but did not receive a reply until 8am on 27 February 2025, the morning of the preliminary hearing. On 13 January 2025 LT emailed the Respondent and the Tribunal from that email it was apparent that LT did not have direct contact with the Claimant, and was instead liaising with the Claimant's carer, who was not identified.

19. On 2 February 2025,LT emailed the Respondent to set out that she was still without instructions from the Claimant.
20. On 21 February 2025 at 01:14am, six days before the preliminary hearing, LT wrote to the Tribunal and the Respondent setting out: "The last I heard from the Claimant she was without housing and on the street and I have not been able to make contact to obtain instructions". LT did not say when she had last had direct contact with her but alluded to having last received instructions on 17 December 2024. LT stated that despite her finding a solicitor for the Claimant, the solicitor could not act until "the Claimant is aware of, understands and agrees to the terms of the contract by signing and returning the client care letters they sent". Also, LT stated that she had lost her phone and had no way of making contact with the Claimant. She failed to set out when her phone had been lost.
21. The respondent considered that LT stated inability to contact the Claimant (or her family) was incredible given that:
  - a. LT had delayed in making the Tribunal and Respondent aware that she had no contact with the Claimant, and that the Claimant was homeless.
  - b. LT appeared to have exchanged documents with the Claimant before presenting them to the Respondent and therefore must have had email contact details for her.
  - c. LT had been liaising with the Claimant's carers and was likely to have their email address.
  - d. LT had the email address of the Claimant's last representative Mr Harris, with whom she could have made contact with, to obtain any contact details.
  - e.LT was the named representative on the ET file and could have requested the phone number and contact details from the Tribunal.
  - f. LT could have requested any contact details from the Respondent at any time since the start of 2025. However, waited to do so until the day before the preliminary hearing.
  - g. It was likely that LTr and the Claimant and/or the Claimant's family had mutual acquaintances given the fact that she had been chosen to represent the Claimant, and she had agreed.

22. On 26 February 2025 the Respondent wrote to the Tribunal setting out is grave concerns that the Claimant was still conducting the proceedings in an unreasonable manner, was not actively pursuing her claim, and that it remained impossible to have a fair hearing. It put the Claimant on notice that if the Claimant failed to attend the preliminary hearing on 27 February 2025, then it would make an application to strike out the claim. LT responded later the same day (26 February 2025) further clarifying that by losing her phone, her phone number had changed, and she had lost her contacts.
23. At 8am on 27 February 2025, on the same day as the Preliminary Hearing started, LT wrote to the Respondent and set out a proposed application to amend and confirmed that she had not been instructed to send the document, that the Claimant had not seen the proposed amendment application and that the Claimant had not approved them. Later the same day, LT wrote to the Tribunal to say that the draft List of Issues was still not agreed. Despite that, LT directed the Tribunal to the Claimant's purported proposed amendments. Ms Tasner stated that the Claimant intended to make an application to amend, and the Grounds of Resistance were "ambiguous, vague and incomplete".
24. The Respondent had real concerns that it was the Claimant that was in fact behind these emails purportedly from LT, given the style of correspondence, and the level of knowledge of the claim despite purportedly not having had contact with the Claimant since the start of 2025.
25. The remote preliminary hearing, the fourth in the case, went ahead at 2pm on 27 February 2025 before EJ Norris. Despite LT being in regular contact with the Tribunal and the Respondent on the same day LT did not attend but the claimant did attend the hearing, whilst sitting in a coffee shop. The Claimant explained that she had come to know that the hearing was taking place because on the previous day, the Tribunal administration had sent the joining details to both LT and the Claimant's sister, and the sister had passed them onto the Claimant. The Claimant's attendance and LT's failure to attend, underlined the Respondent's concerns that LT was in fact a pen name of the Claimant.
26. It was noted that upon receiving the joining details for the hearing, the Claimant had not emailed LT (or asked her sister to email LT on her behalf) given that she was her representative. EJ Norris noted that the situation was unclear in her order (see paragraph 6 of the case management order that followed).

27. Little progress was made given and the matters listed to be considered at the preliminary hearing were not completed. The hearing was adjourned and listed for 8 May 2025, in person. The Tribunal sent the Claimant's phone number to LT on 13 March 2025. On 20 March 2025 LT made an application to amend the Third Claim. On 21 March 2025 the Respondent wrote to the Tribunal setting out its concerns that the Claimant and LT were continuing to use links to Google Drive documents to present documents in the claim . Not only were those links sometimes inoperable for the Respondent, unlike email attachments, anyone with access to the link could modify document after they had been shared. There was no verifiable record of what had actually been presented and at what date and time.
28. On 21 March 2025 the Tribunal wrote to the Claimant (through LT) and was asked to confirm whether LT continued to represent the Claimant and whether they had re-established contact. LT responded on 2 April 2025 to confirm that she still represented the Claimant and that they had re-established contact.
29. On 24 March 2025, LT wrote to the Tribunal to confirm the Respondent's letter to the Tribunal regarding its concerns with the continued use of Google Drive links had been passed on to the Claimant. LT also stated that the Claimant "kindly asks that she be granted the opportunity to make submissions via her new representative so the matter can be considered fairly." No notice of a change in the Claimant's representation had been given to the Respondent .
30. On 24 April 2025 LT wrote to the Respondent putting it on notice that she would be making an application to convert the hearing into a remote hearing "in order for to have a chance of attending", and that "The only other option would be a postponement which I am keen to avoid". In her order, EJ Norris had directed that if the claimant was unable to attend in person that she should provide evidence which prevents attendance. None was provided at this time and the Respondent wrote to LT to remind her of this direction.
31. LT engaged in correspondence with the Respondent on the List of Issues and the Claimant's application to amend.
32. On 6 May 2025, another sister of the claimant, NS wrote to the Tribunal, on the Claimant's behalf, to inform it and the Respondent that "owing to a family emergency, LT, the Claimant's representative, has not been in a position to support the Claimant since she was informed of the tragedy". No details of the emergency were shared. Despite the Claimant apparently not being able to send or receive correspondence on her own, NS asked that the Claimant be recorded

as now representing herself, and that all correspondence be sent to the generic email address (etcasectorcorrespondence@gmail.com).

33. EJ Keogh wrote to the parties on 7 May 2025 noting the Claimant's intention to represent herself and reminded her that the preliminary hearing on 8 May 2025 was in person.
34. The fifth Preliminary Hearing was before EJ Klimov on 8 May 2025. The hearing was listed from 1pm to accommodate the Claimant's attendance at the Tribunal. At 7:56am on the morning of the hearing, NS, made an urgent application to postpone the hearing, again without copying in the Respondent. It stated:
  - a. The Claimant had left the UK, and "steps were taken to secure her safety" - NS did not give any details about when the Claimant had left the UK, where she had gone, or what steps had been allegedly taken to secure her safety. Later, during the preliminary hearing the clerk to the Tribunal stated that she was in Oman. The Claimant provided no evidence to support her assertion that she had in fact left the country but cited some reasons for her departure, again unsupported by evidence.
  - b. that it had been intended that LT attend on the Claimant's behalf, however in light of LT's recent inability to represent the Claimant, "the Claimant confirmed that she would do everything she could to participate" despite LT having already informed the tribunal that she did not want to attend the tribunal in-person.
  - c. The Claimant was financially insecure, and this had caused "an avalanche of issues, including trouble with housing". It should be noted that the Claimant remains in employment with the Respondent and is in receipt of £1985.42 by way of PHI payments each month (equivalent to two thirds of her base salary). On top of this, the Claimant receives full pay for any accrued but untaken holiday days each month. The Claimant's allegation that the Respondent had withheld money from the Claimant was dismissed in the First and Second Claims.
  - d. The Claimant was homeless whilst abroad.
  - e. The Claimant's bag had been stolen with her passport inside, yet no evidence provided to the tribunal that the claimant had reported the loss and what steps the claimant had taken to obtain a replacement passport.
  - f. The British Embassy had confirmed the passport's cancellation and issued an Emergency Travel document to enable the Claimant to attend the hearing– the email address provided was emergency.travel.documents@notification.service.gov.uk was addressed to contactsherry1@gmail.com. The .gov email address is an automatic email sent from an unmonitored inbox once an application for emergency travel documentation has been made. The Claimant failed to provide any emails supporting the actual application she had allegedly made. In any case, the requirements to apply for an emergency travel document do not include



confirmation from the British Embassy regarding the status of an individual's passport; this application can be made by any British national, outside of the UK as needed on a self-reporting basis at a cost of £125. The email did not say where the courier was going to deliver the emergency travel documents. The email was dated 5 May 2025, the day before NS notified the Tribunal that LT was no longer representing the Claimant.

g. There had not been any contact from the courier, the Claimant had not received the travel document, and in any event it would no longer be valid as it was only valid for the specific date and route for which they were issued, all details unsupported by any evidence.

h. The Claimant "was also scheduled to first attend an annual health check" – the screenshot of text messages provided simply showed that on Tuesday 29 April "Miss S" had received an automated prompt to attend an annual health check, and that on the same day, the health check was booked for Wednesday 7 May. The email sent to "me/Miss S" was undated. This appointment was then cancelled the Claimant's appointment on 7 May 2025. The tribunal was not informed of the difficulties that the claimant was having.

i. There was no one available to represent the Claimant at short notice and no explanation was provided as to why that was the case.

35. The Claimant's application to postpone was refused by EJ Klimov and the preliminary hearing went ahead.

## **Legal Principles**

36. Rule 38 of The Employment Tribunal Procedure Rules 2024 (the ET Rules) provides:

Striking out

38.—(1) The Tribunal may, on its own initiative or on the application of a party, strike out all or part of a claim, response or reply 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, response or reply (or the part to be struck out).

(2) A claim, response or reply 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.

37. Whichever of the rule 38(1) subsections are applied there is, broadly speaking, a two-stage process: the Tribunal must consider whether the statutory threshold is met and, if it is, must then exercise its discretion whether to strike out the claim (HM Prison Service v Dolby [2003] IRLR 694, EAT, at [15] and Hasan v Tesco Stores Ltd UKEAT/0098/16).
38. The discretion must be exercised in accordance with the overriding objecting in Rule 3 of the ET Rules 2024. When considering whether to exercise its discretion to strike out the claim to strike out it will often be relevant for the Tribunal to consider:
  - a. whether a fair hearing is still possible taking into account the conduct in question (De Keyser Ltd v Wilson UKEAT/1438/00, Bolch v Chipman UKEAT/1149/02, Weir Valves & Control (UK) Ltd v Armitage [2004] ICR 37, and Emuekoro v Cromo Vigilant (Scotland) Ltd and ors [2022] ICR 327).
  - b. whether a lesser penalty is appropriate.
39. The only possible exception is where there has been 'wilful, deliberate or contumelious disobedience' of an order (Bolch v Chipman at [55]; Weir Valves at [16]).
40. The wilful disregard of tribunal orders has been held to constitute scandalous, unreasonable or vexatious conduct. The Court of Appeal in Blockbuster Entertainment Limited v James [2006] IRLR 630 at gave the example of "deliberate and persistent disregard of required procedural steps" as meeting the definition of what is now r 38(1)(b).
41. In Governing Body of St Albans Girls' School v Neary [2009] EWCA Civ 1190, [2010] IRLR 124 the Court of Appeal held "It is well established that a party guilty of deliberate and persistent failure to comply with a court order should expect no mercy".
42. As to r 38(1)(b), the four-fold criteria outlined by Burton J in Bolch v Chipman at [55], have been repeatedly approved by the Court of Appeal. Three of those criteria are relevant to possible strike out of a claim, rather than a response: (1) was the conduct in the proceedings scandalous, unreasonable or vexatious; (2) was the result of that conduct that there could not be a fair trial. Futher, strike out

is a draconian step or a “measure of the last resort” (see: Peixoto v British Telecommunications Plc UKEAT/0222/07 at [44]) Therefore the tribunal must have consideration of a less draconian step.

43. It is my finding that the claimant has been unreasonable in the conduct of this claim throughout. It is my finding that the claimant has been unreasonable in terms of the conduct of this claim throughout, and collaborative, unengaged, and has engaged in persistent and will for non-compliance with the tribunal's orders and tribunal's procedural stop consequently, I find that the claimant's conduct has been unreasonable, scandalous, and vexatious. Yet again, the claimant has not attended this hearing which has been structured in a way to accommodate her needs yet she has not attended and has failed to provide a reason for non-attendance in advance of the hearing. Further, I have reached the view that the claimant is not actively pursuing the claim as is evident from her persistent efforts in avoiding participation in the case preparation and in her avoidance of case management hearings.
44. I have reached these findings based on the factual evidence before me in the form of a bundle which details the sorry sequence of postponed and/or non-effective case management hearings which detail the extensive efforts expended on the part of the claimant and others on her behalf to avoid the essential elements of case management which require active engage from the parties. It is my finding that the claimant is entirely disengaged from actively pursuing this claim and I reach this conclusion based on the history that I have set out about.it is difficult to think of a more egregious example of non-compliance and non-engagement by a litigant before the tribunal.
45. If I were to adjourn this hearing another one, I would be doing so without any indication or commitment from the claimant as to when the claimant would engage in it to an acceptable standard. Preliminary hearings are an essential part of case management. I consider the role of case management in this claim to be an essential procedural step in a in a complex case such as this. By her conduct, the claimant is injecting more delay and complexity into this claim jeopardising its management by the tribunal and judges within it and is of such a serious nature as to give rise to legitimate concerns as to whether or not this is a case which could ever be effectively managed. In light of the evidence that I have reviewed today I have reached the view that is not possible to manage this case going forward with this claimant and I have reached this finding having regard to Article 6 of the European Convention on Human Rights. In my view the balance of my consideration is that further delay will mean that the respondent will not be able to have a fair trial and further delay will only exacerbate this position.

46. As I already stated, I formed the view that the conduct of the claimant has been serious and substantial and consider that it is incapable of being rectified to a level which will enable tribunal to manage the claim effectively for the respondent to participate reasonably and effectively in this case. The conduct runs counter to the Overriding Objective but it is also my finding that the history in this case leads to an inevitable finding the impossible to have a fair trial of this matter nor would it be possible one that could be said to the client with the overriding objective that it is not a case that could be run in a way that is proportionate. I directed and ordered that the claimant should be struck out.
47. I gave an oral judgment at the end of the hearing. The following day the claimant wrote to the tribunal to state that she had been declared unfit to attend the hearing by her psychiatrist. The claimant provided a SharePoint link for the access to the letter. The email was not copied to the respondent as far I as I could see. The email did not request that the hearing be postponed and therefore the claimant's email was not treated as one.

Employment Judge Forde

1 July 2025

Sent to the parties on:

9 July 2025

.....  
For the Tribunal Office:

.....