EMPLOYMENT TRIBUNALS

Claimant: Dobrin Ghilase

Respondent: Hirsch Properties Limited

Heard at: London Central (by CVP) **On:** 23 June 2025

Before: Employment Judge Khan (sitting alone)

Representation
For the claimant: Represented himself, supported by his brother Marin Ghilase (until 12.45 pm)
For the respondent: Ms J Forrest, solicitor

Interpreter (Romanian): Mr F L Naramzoiu

By a Judgment given orally on 23 June 2025 to strike out the claim and written reasons having been requested by the Claimant, the following reasons are provided.

REASONS

This hearing

(1) This public preliminary hearing was listed by EJ Salter at a preliminary hearing on 10 January 2025 (as confirmed by a Case Management Order sent to the parties on 14 January 2025 ("the CMO")) to do the following:

a. Decide on the employment status of the Claimant.
b. If the Claimant was found to be an employee, to decide on whether the unfair dismissal claim should be dismissed on grounds that he did not have two years' continuous service;
c. Make any necessary case management orders.

(2) Further to the Respondent's applications on 10 and 26 February 2025, the Tribunal wrote to the parties on 9 May 2025 to confirm that the following additional matters would also be considered at this hearing:

Whether to strike out the claims because the Claimant has not complied with the orders of the Tribunal, his case is not being actively pursued or the manner in which he has conducted the proceedings is scandalous, vexatious or unreasonable.

(3) The Respondent produced a bundle of documents of 47 pages. Other than the claim and response forms and the CMO, this bundle contained documents which it was unnecessary to review as they were not relevant to the issues I decided. Similarly, the Respondent also served a witness statement produced by Oliver Hirschmann dated 24 April 2025 which it was unnecessary for me to consider. The Claimant also sought to rely on a witness statement produced by his brother which had not been sent to the Respondent within the stipulated deadline but which was also not considered as it was not relevant to the issues I decided.

(4) The hearing was adjourned until 11.30am because a Romanian interpreter was not in attendance when the hearing started at 10.45am. A Romanian interpreter was able to join the hearing when we restarted at 11.30am. We were therefore able to proceed with this hearing.

(5) I began by exploring the issues to be decided at this hearing with the parties. I dealt with the unfair dismissal complaint first. I then decided that I would hear the Respondent's submissions on strike out by reference to the Claimant's conduct next. I then heard the Respondent's submissions on strike out by reference to the other grounds relied on. The Claimant then gave evidence under oath when I ensured that he was given the opportunity to address the Respondent's submissions.

Relevant legal principles

(6) Rule 38(1) provides for strike out of all or part of a claim on any of following five specified 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).

(7) Strike out is a draconian power not to be readily exercised.

(8) A two-stage approach is required. Firstly, a Tribunal must consider whether any of the specified grounds for strike out have been established and if so, it is must then consider whether to exercise its discretion to strike out. This second stage engages consideration of the overriding objective, including the question of proportionality i.e. whether a lesser sanction is available and appropriate.

(9) In respect of rule 38(1)(b), the EAT has held in *Bolch v Chapman* [2004] IRLR 140 that a Tribunal must consider the following four matters:

- The first question is whether there has been scandalous, unreasonable or vexatious conduct of the proceedings.
- If so, the second is whether a fair trial is no longer possible.
- If that is fulfilled the third is whether strike out would be a proportionate response to the conduct in question.
- The fourth is, if the claim or response is struck out, what further consequences might follow, including consideration of whether a respondent debarred from participation at the liability stage should nevertheless be permitted to appear at the remedy stage.

(10) *Bolch* was cited with approval by the Court of Appeal in *Blockbuster Entertainment Ltd v James* [2006] IRLR 630 when the Court qualified this guidance by identifying the following cardinal conditions for strike out on this ground:

> "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 fulfilled, it becomes necessary to consider whether, even so, striking out is a proportionate response…"

(11) In respect of rule 38(1)(c), the EAT in *Weir Valves and Controls (UK) Ltd v Armitage* [2004] ICR 371, identified the following relevant factors:

- the magnitude of the non-compliance
- whether the default was the responsibility of the party or his or her representative
- what disruption, unfairness or prejudice has been caused
- whether a fair hearing remains possible, and
- whether striking out or some lesser remedy would be an appropriate response

(12) In respect of rule 38(1)(d), as per the guidance set out in the House of Lords decision of *Birkett v James* [1978] AC 297, there are two distinct grounds for strike out:

- there has been a delay that is intentional or contumelious (i.e. disrespectful or abusive to the Court / Tribunal (the "first *Birkett* principle"), or
- there has been an inordinate and inexcusable delay by the Claimant or their legal representatives, which gives rise to a substantial risk that a fair hearing is impossible, or which is likely to cause or have caused serious prejudice to the Respondent (the "second *Birkett* principle").

(13) The distinction between these grounds was underlined by the EAT in *Rolls Royce plc v Riddle* [2008] IRLR 873, when it explained:

> "The first is that it is quite wrong for a claimant, notwithstanding that he has, by instituting a claim, started a process which he should realise affects the employment tribunal and the use of its resources, and affects the respondent, to

> fail to take reasonable steps to progress his claim in a manner that shows he has disrespect or contempt for the tribunal and/or its procedures. In that event a question plainly arises as to whether, given such conduct, it is just to allow the claimant to continue to have access to the tribunal for his claim. That is a distinct and different matter from the second problem which is that if a claimant has failed to actively pursue his claim to an inordinate and inexcusable extent so as to give rise to a risk of real prejudice to the respondent if the claim were to carry on, then a question arises as to whether or not there can still be fair trial and if there is doubt about that whether the claim should then be prevented from going any further."

(14) In considering whether a fair trial remains possible under rule 38(1)(b), (c) and/or (d) a Tribunal must be satisfied that there is a 'significant risk' that a fair trial is no longer possible (see *Arrow Nominees v Blackledge* [2000] 2 BCLC 167); and *Emuemukoro v Croma Vigilant (Scotland) Ltd* [2022] ICR 327).

(15) In *Emuemukoro* the EAT cited *Arrow Nominees* to hold that the factors relevant to whether a fair trial is possible are not confined to the feasibility of conducting a trial whilst the memories of witnesses remain sufficiently intact but include the undue expenditure of time and money, the demands of other litigants and the finite resources of the court.

(16) In *Leeks v UCL Hospitals NHS Foundation Trust* [2024] IRLR 866, the EAT underlined that where the conduct falls within rule 38(1)(b), (c) and/or (d) the likelihood of recurrence is relevant to the possibility of a fair trial, and explained:

> "Where a party has conducted proceedings in a manner that has been scandalous, unreasonable or vexatious, has failed to comply with the ETR or an Order of the Employment Tribunal or the claim has not been actively pursued, that may be relevant to the possibility of a fair trial because if there has been repeated default in the past it is common for it to be repeated in the future, particularly if the party in default does not persuade the Employment Tribunal that their approach will change."

(17) Similarly, in relation to the question of proportionality, a Tribunal must take account of the duration and character of the unreasonable conduct (see *Blockbuster*), and the distinction between, on the one hand, repeated failures to comply with orders over an extended period, and on the other hand, an aberration which is unlikely to recur (see *Harris v Academies Enterprise Trust* [2015] IRLR 208).

The claim

(18) By a claim form dated 4 July 2024, the Claimant brought complaints of unfair dismissal and race discrimination. The Claimant gave his dates of employment as being from 20 September 2023 to 20 May 2024.

(19) The Respondent resists this claim.

(20) At the preliminary hearing on 10 January 2025, which the Claimant did not attend, EJ Salter provisionally identified, in addition to the issues and matters to be

decided at this public hearing (which have been set out at paragraph 1 above), the sole legal complaint of direct race discrimination.

Dismissal of the unfair dismissal complaint

(21) Under section 108 of the Employment Rights Act 1996 a claimant cannot bring a complaint of unfair dismissal if they have been employed for less than two years, unless one of the exceptional reasons applies to their case which does not require two years' qualifying service.

(22) The Claimant agreed that regardless of his employment status he was employed or engaged by the Respondent for less than two years which meant, unless one of the exceptional reasons applied, he could not bring an unfair dismissal complaint. None of these exceptional reasons appeared to apply to the Claimant's case and the Claimant did not identify one. As EJ Salter recorded in the CMO, in the provisional list of issues, the Claimant's claim was that his employment had been terminated by the Respondent on the ground of his race.

(23) The Claimant did not therefore bring, and nor could he bring, a complaint of unfair dismissal but a complaint of race discrimination in relation to the termination of his employment.

(24) I therefore decided to dismiss the unfair dismissal complaint on the basis that there was no reasonable prospect of the Claimant establishing that he had the requisite qualifying service to bring such a complaint.

Strike out of the discrimination claim

The preliminary hearing on 10 January 2025

(25) It is necessary to first set out the procedural history and relevant correspondence.

(26) As has been noted, the Claimant did not attend the preliminary hearing on 10 January 2025. This hearing was conducted remotely by video. The CMO records that the hearing was delayed to start at 11am, owing to an administrative issue, about which both parties were notified. The Claimant confirmed that he would attend at 11am. When the Claimant failed to attend the hearing at 11am, the Judge asked the clerk to make further enquiries with the Claimant. The clerk was able to speak with the Claimant to confirm that an interpreter was now in attendance and to remind him that the hearing had been retimed to start at 11am. When the hearing resumed at 11.10am, the Claimant was not in attendance. The hearing therefore proceeded in the Claimant's absence.

(27) The Claimant was ordered to write to the Tribunal by 21 January 2025 to explain his non-attendance and to provide any supporting documents. He was also ordered to confirm whether he intended to proceed with his claims.

(28) The parties were ordered to the Tribunal within 14 days of the date the CMO was sent to them (i.e. by 28 January 2025) to confirm whether the issues which EJ Salter had set out were inaccurate or incomplete.

(29) Additionally, EJ Salter made a series of orders concerning the steps the parties were required to take to prepare for this preliminary hearing i.e. disclosure of documents (by 21 February 2025), production of a hearing bundle (by 21 March 2025) and the provision of witness statements (by 25 April 2025).

(30) Returning to the Claimant's non-attendance at the preliminary hearing, it appears that EJ Salter had not been notified by the Tribunal that the Claimant had sent an email to the Tribunal at 11.30am on 10 January 2025 to say that he had not been sent the PIN to join the hearing. However, as the Tribunal subsequently confirmed, on 30 January 2025, the Claimant had received the correct PIN in advance of the hearing.

(31) It is important to note that in completing the claim form, the Claimant had confirmed (at section 1.11) that he could not take part in either video or phone hearings because "I do not know English well". I will return to this point below.

(32) The Claimant emailed the Tribunal on 30 January 2025 to state "I'm depressed, my lungs and liver are broken…" No other details nor any medical documents were provided. The Claimant sent another email on 31 January 2025 in which he made several allegations against the Respondent, including that the Respondent was "a criminal" and concluded his email by stating: "Pay attention to what I tell you because you favor [sic] a criminal, I will take all steps to sue you too at the human rights court in Strasbourg".

The Respondent's application

(33) The Respondent applied on 10 February 2025 to strike out the claim or for deposit orders to be made. It relied on three grounds.

(34) The first ground was that the complaints had no reasonable prospects of success. In relation to the unfair dismissal claim, it was submitted that the Claimant was not an employee of the Respondent and he had, in any event, been engaged for less than two years by the Respondent so that the claim had no reasonable prospect of success. In relation to the race discrimination claim, it was submitted there was no evidence to substantiate the allegation that the reason for the Claimant's dismissal was his race.

(35) The second and third grounds were that the manner in which the Claimant had conducted proceedings had been unreasonable and there had been non-compliance with an order of the Tribunal. In respect of both grounds, the Respondent relied on the Claimant's failure to attend the preliminary hearing and submitted that he had additionally failed to provide an adequate explanation for his non-attendance.

(36) The Respondent's solicitor, Ms Forrest, sent this application together with a covering email to the Tribunal and the Claimant at 5.20pm.

The relevant correspondence

(37) The Claimant responded by sending several emails in short succession on the same date (emphasis added).

At 5.27pm, the Claimant replied to Ms Forrest, copied to Mr Hirschmann, director of the Respondent:

> "your client made me a gypsy and fired me from my job where I ended up on the streets..your client must be held criminally liable for paying at least 1 million pounds to the English state because he did not pay taxes to the state, having had 7-8 people without papers working illegally for him for at least 12 years..what you don't know is that I have many witnesses..are you threatening me with paying court costs?no, no way..i demand his arrest as soon as he makes the world a gypsy and that he employs people without papers..to prison with him"

At 5.35pm, the Claimant wrote to Ms Forrest, copied to Mr Hirschmann and the Tribunal:

> "**you don't try to threaten me that I'm going to put my dick in your dead and your whole family..well fuck your dead**, you knew that I went into depression and wanted to take my life twice because this guy made me a gypsy and kicked me out and in exchange for me he brought 5 people without work papers? he brought immigrants without residence in the uk..you come now and threaten me? you knew that he sent 2 immigrants to my door and broke the window of my door so that I would drop the charges?**well fuck your dead**, you really aren't ashamed to write me threats continuously..you mean you want me to kill myself right now, that's what you want **fuck your dead**"

In an email sent to the same recipients at 5.48pm, the Claimant continued:

> "for the threats made here you see that the compensation has just been increased..now I want 90,000 thousand pounds + at least 5 years in prison for this racist who has to give the state 1 million pounds"

In a further email sent to the same recipients at 6.01pm, the Claimant added:

> did he pay you to threaten me? aren't you even a little ashamed? **be careful with these threats, they're not good...you really can't scare me, because I'll file a criminal case against you too**. in this country there's no respect anymore, there's no law anymore? everyone does what they want, when they want?

(38) The Claimant's emails to Ms Forrest elicited the following response from Janice Jones, Client Relations Manager and a Partner of the firm of solicitors acting for the Respondent, sent at 1.26pm on 12 February 2025:

> "I am the Client Relations Manager for Anderson Strathern solicitors. I have been alerted by our IT department to emails from you to our Jemma Forrest. The emails which were sent by you on 10th February contained such foul language and contained such threats towards Jemma at the emails were trapped in our firewall and did not get through to Jemma.

> Nevertheless, I am writing to make it clear to you that this firm will not tolerate abuse towards any member of our staff. I am writing to give you this opportunity to consider, and I hope that going forward any further communications that you send to this firm communications will be worded courteously and non-threatening.
>
> Should there be a repetition of the abuse that was directed towards Jemma in the emails of 10th February, we will escalate this. To be very clear your threats will be reported to the Police. We will block your email meaning that you will not be permitted to communicate by email with any member of our staff and any communications that you wish to send or may be required to send in respect of the Employment Tribunal will require to be sent to us by recorded delivery post instead.
>
> We operate a zero tolerance and will not accept any abuse or threats towards any members of our staff and your behaviour must stop immediately. No further warnings will be issued to you.
>
> This communication may be lodged in the Employment Tribunal and presented to the Police or any other authorities as required."

(39) The Claimant then sent the following four emails to Ms Jones on the same date (emphasis added).

The first email was sent at 2.43pm:

> "Are you misleading me? You threaten me…instead of putting him in jail but coming to me my threats and by email and by sending 2 guys who work for him without papers to break down my door…charge him because I am tired of the threats"

The second email was sent at 2.49pm:

> "Do you see what you are saying here? I mean, you come to me with threats and turn me over to the police because I swore at you? Come on, please turn me over to the police..because **if you come to me with threats again, I will take your family, your people and your lives**. I see that you are not calming down and you are again threatening the police"

The third email was sent at 2.52pm:

> "I say the police should deal with you who send me intimidating and threatening emails in the hope that you can make me commit suicide."

The fourth email was sent at 10.58pm:

> "you come to me and threaten me that I have to pay court costs after which I swear and after that you threaten me again that you will hand me over to the police... but where were the police when I wanted to kill myself because of this guy who made me a gypsy and ruined my life? where were the police when that guy sent 2 immigrants who work for him without papers to break my door window? where are the police when he has been working for 12 years with people who do not have the right to work in the UK? where are the police and hmrc that he does not pay taxes to the state because for 12 years he has always had 8-9

> without papers? see that I have witnesses about this, so stop coming to me with threats that it will not work"

(40) As the Claimant had been warned by Ms Jones, following his emails on 12 February 2025, Ms Forrest emailed the Tribunal at 10.01 on 14 February 2025, copying in the Claimant, to explain the following:

> "…I am writing to advise the Tribunal that my firm has blocked email communications from the Claimant given his communications of late. Please see attached a copy of the email to the Claimant from our Client Relations Partner. Given the parties are required to copy each other to any correspondence to the Employment Tribunal, the Claimant will be required to send a hard copy of any correspondence he sends to the Tribunal to my firm. At present, we do not have access to the case via MyHMCTS therefore, would appreciate if the Tribunal could share with us any correspondence from the Claimant that is received…"

(41) The Claimant responded by an email sent at 1.30pm on the same date, in the following terms (emphasis added):

> "**Fuck you dead**, and you're threatening me with the police? Why are you coming here to text me? Why are you harassing me considering that your racist client has put me in a depression? **Get the hell out of here and stop sending me emails because I'm pissing on you and your dead**..leave me the hell alone"

Ms Forrest did not receive this email because the Claimant's email correspondence had been blocked.

The Respondent's additional grounds for strike out

(42) Ms Forrest then wrote to the Tribunal again on 26 February 2025 to reiterate and add to the Respondent's extant strike out application. It was submitted that the Claimant had failed to comply with the order to disclose documents by 21 February 2025 which the Respondent relied on as a further act of non-compliance. Additionally, the Respondent relied on the Claimant's correspondence of 10 and 12 February 2025 as amounting to scandalous, unreasonable and vexatious conduct warranting strike out (no reference was made to the Claimant's email of 14 February 2025 because this had been blocked):

> "...Whilst the Respondent appreciates that there may be reasons for the Claimant's conduct in this regard, it would be remiss of the Respondent not to raise these with the Tribunal. The Respondent refers to the conduct of the Claimant since the strike out and deposit order applications of 10 January 2025. The Respondent considers the content of the Claimant's six consecutive emails of 10 February 2025 were scandalous, unreasonable and vexatious. These were sent to the Respondent's representative, the Respondent's sole director, Oliver Hirshmann (and future witness at the hearings) and the Tribunal. These emails appear to be designed to intimidate and threaten the Respondent's witness, Oliver Hirshmann, as well as the representative. As mentioned, Mr Hirshmann is the Respondent's sole director and is the intended witness at the preliminary hearing and any final hearing. The content of the Claimant's emails contain

> threats to life and the life of others. Furthermore, as the Tribunal is aware, once our firm's client relations partner wrote to him on 12 February 2025 cautioning for his language and threats, he continued to send 4 more emails to our client relations partner of a similar nature. It is clear that the Claimant will not desist or moderate his conduct in any way despite a request to do so. There is also significant concern about the ability to have a fair trial when the Respondent's primary witness is being threatened in such a manner."

(I pause here, to note that I was only taken to the four emails on 10 February 2025 to which I have referred above.)

(43) By an email sent at 2.42pm on the same date, the Claimant replied to Ms Forrest (which it is likely that Ms Forrest did not receive for the reasons already set out) and copied to the Tribunal:

> "and you're talking about threats that I'm making when you came to me with threats..are you really not ashamed to lie? because I have those emails in which you threaten me to pay if I lose the lawsuit..first of all, I can't lose when the man made me a gypsy, when the man sent 2 people who work illegally for him to break down the door to my house..I can't lose when he has to pay over 1 million pounds to HMRC because he hasn't paid the state for 14 years because he always had 7-8 people without the right to work"

(44) It is agreed that the Claimant has not sent any email correspondence to Ms Forrest or Ms Jones since that date. He explained that this was because his email communication had been blocked. By a letter dated 9 May 2025, the Claimant was also ordered by the Tribunal to correspond with the Respondent by sending a hard copy letter by post and not by email.

The Respondent's submissions

(45) The part of Ms Forrest's email dated 26 February 2025 which I have recited above encapsulates the Respondent's submissions in support of its application to strike out the claim on the ground of the Claimant's conduct.

(46) In respect of the application to strike out the claim on the ground of the Claimant's non-compliance with the Tribunal's orders, Ms Forrest submitted that the Claimant had failed to attend the preliminary hearing on 10 January 2025, he had failed to provide an explanation for his non-attendance, he had failed to disclose any documents nor to provide a witness statement and had failed to disclose his brother's witness statement on the same date as the Respondent disclosed Mr Hirschmann's statement nor before this hearing. Ms Forrest added that the Claimant had not disclosed any barriers which had prevented his compliance with these orders. For example, although the Respondent's legal representatives had blocked his email correspondence this had not precluded the Claimant from sending documents to the Respondent by post and continuing to correspond with the Tribunal by email. To the extent that the Claimant relied on his mental health, Ms Forrest made the point that the Claimant had failed to produce any medical evidence to substantiate this. In respect of the proportionality of striking out the claim, Ms Forrest submitted that the lesser sanction of an unless order would not be appropriate because of the likelihood that the Claimant would not comply with

one, as underlined by the Claimant's failure to actively pursue the claim in the previous four months.

(47) In respect of the Claimant's failure to actively pursue the claim, Ms Forrest relied on the fact that the Claimant had not only failed to comply with the Tribunal's orders, but that he had failed to correspond with the Tribunal since 26 February 2025, despite the Tribunal's clear warning in the CMO about the potential consequences of non-compliance with its orders.

The Claimant's evidence

(48) The Claimant gave the following evidence, with the assistance of the interpreter:

- He had not been able to locate the page with the PIN to access the preliminary hearing on 10 January 2025. He had located the PIN only after he had written to the Tribunal on 30 January 2025. He had been able to log in to this hearing with the help of his brother.
- It was likely that he had received the CMO on 14 January 2025 but had not read it.
- His evidence was that he was in a very deep depression with suicidal ideation. He had today spoken with his brother for the first time in six months despite living in the same house as him.
- In respect of the email sent at 5.35pm on 10 February 2025, the Claimant confirmed that this was directed at Ms Forrest because she had threatened him. When I asked the Claimant about his words "I'm going to put my dick in your dead and your family", his evidence was that the translation was wrong. The original words he had used which were translated by the Romanian interpreter were "I am going to put my dick in your dead relatives and your family". When I asked the Claimant if he accepted that this was threatening and intimidatory, the Claimant's evidence was that he had used this language because he was also intimidated. His evidence was also that he had felt intimidated and harassed, and perceived that Ms Forrest was evil.
- In respect of the email sent at 6.01pm on 10 February 2025, the Claimant confirmed that this was directed at Ms Forrest. When I asked the Claimant if he agreed that he had threatened Ms Forrest, the Claimant disagreed, his evidence was that it was not a threat to turn someone over to justice. He said that he had never caused harm in his life.
- When I asked the Claimant whether he accepted that the email he sent to Ms Jones at 2.49pm on 23 June 2025 was threatening, the Claimant's evidence that it was not a threat, he had meant to write "to take you all on my dick" to mean "fuck you all".
- In respect of the Claimant's failure to take any action in the case since 26 February 2025, his evidence was that he could not do anything because he was unable to pay for a solicitor.

Conclusions

(49) I decided to strike out the discrimination complaint under rule 38(1)(b) for the following reasons.

(50) Firstly, I was satisfied that the Claimant's conduct in sending the emails on 10, 12 and 14 February 2025 was scandalous (i.e. abusive) and unreasonable and therefore met the threshold for strike out under rule 38(1)(b). The emails on 10 February were directed at Ms Forrest and also Mr Hirschmann, the emails on 12 February were directed at Ms Jones and the email on 14 February was directed at Ms Forrest. These emails not only contained language which was offensive and intemperate, and highlighted the Claimant's animosity towards Mr Hirschmann and the Respondent's legal representatives, principally Ms Forrest, they were abusive, threatening and intimidatory. The Claimant had not heeded Ms Jones' warning but had in fact responded with the more serious threat "I will take your family, your people and your lives". I did not accept the Claimant's evidence that this language in the email sent at 2.49pm on 23 June 2025 was due to a translation error for two reasons: firstly, this was not an isolated email but was part of a group of emails which were of a threatening and intimidatory nature; secondly, the translation error in relation to the email sent at 5.35pm on 10 February 2025 was in one sense minor and in another sense, revealed, on the Claimant's evidence, that what he had intended to convey was in fact more offensive than the version he sent. The Claimant had also threatened Ms Forrest in his email dated 14 February 2025.

(51) Secondly, I had no confidence that the Claimant would moderate his conduct towards Ms Forrest and/or Mr Hirschmann in response to any perceived injustice concerning the ongoing prosecution of the Respondent's defence. In the circumstances in which the Claimant's conduct towards the Respondent's legal representative and which extended to the Respondent's sole witness of evidence, was abusive, threatening and intimidatory, I was satisfied that a fair hearing was no longer possible.

(52) Thirdly, in the circumstances in which the Claimant had showed no insight, contrition or remorse and there was a risk that the Claimant would repeat the same or similar conduct, I did not consider that there was a less draconian sanction which could be applied.

(53) I would add, for completeness, that the Claimant did not provide any medical evidence which either explained or mitigated his conduct. The fact remained that he did not accept that his conduct had been problematic.

(54) I would not have struck out the discrimination complaint on the alternative grounds relied on by the Respondents, for the following reasons.

(55) In respect of the ground that there had been a failure to comply with the Tribunal's orders I was satisfied that the Claimant's conduct had met the threshold under rule 38(1)(c). The Claimant had failed to comply with the Tribunal's orders to prepare for this hearing and he had not provided any satisfactory explanation for this. He had not written to the Tribunal to explain any difficulties he had faced in complying with these orders nor to apply for an extension to any of the deadlines. It was relevant that the Claimant had been warned of the potential consequences of non-compliance in the CMO. In respect of the Claimant's failure to attend the preliminary hearing on 10 January 2025, I gave the Claimant the benefit of the doubt because a video hearing was not an appropriate forum and whilst an

interpreter had been provided, it was likely that the Claimant required IT support together with the services of an interpreter in order to access the hearing. I accepted that by the date that the CMO was sent to the parties, the Claimant had attempted to explain why he had failed to attend the hearing and although he had in fact been provided with the PIN, I also accepted that he had been genuinely confused about this at the time he wrote to the Tribunal. Overall, however, I was not satisfied that there was a risk that a fair hearing was no longer possible because of the Claimant's failure to comply with the Tribunal's orders, although I would have been minded to make an unless order to give the Claimant a final opportunity to act in accordance with the overriding objective and to cooperate with the Tribunal and the Respondent to progress this case, failing which the claim would stand dismissed without further order.

(56) In respect of the ground that the claim had not been actively pursued, I was satisfied that the Claimant's failure to take any action to progress the claim, despite the orders set down in the CMO, and the warning about the consequences of non-compliance, between February 2025 and the date of the hearing (and with the only action taken by the Claimant amounting to scandalous and unreasonable conduct) met the threshold under rule 38(1)(d) by reference to the first *Birkett* principle. However, I was not satisfied that this meant that there was a risk that a fair hearing was no longer possible and for the same reasons set out in the preceding paragraph, I would have been minded to make an unless order.

Approved by:

Employment Judge Khan

18.09.2025

Sent to the parties on:

19 September 2025

…….

For the Tribunal:

…….