EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
X	**v**	**Harrow Council**

OPEN PRELIMINARY HEARING

Heard at: Watford (in person) **On**: 5 September 2025

Before: Employment Judge Wyeth

Appearances

For the Claimant: In person
For the Respondent: Mr A Olatokun, counsel

JUDGMENT

1. The respondent's application by email dated 3 March 2025 to strike out the claim because it has not been actively pursued under r38(1)(d) of the ET Rules 2024 is refused.

2. The respondent's application by email dated 20 August 2025 to strike out the claimant's race discrimination complaints (subsequently identified at paragraphs 14.1, 14.4, 14.5, and 14.9 to 14.12 of EJ Dick's case management order made on 17 July 2024) under r38(1)(a) of the ET Rules 2024, or order a deposit in the alternative under r40, is refused.

REASONS

1. Having given full extemporaneous reasons at the conclusion of the hearing, below is a summary of the reasons for refusing the respondent's applications.

2. This matter has already had significant judicial intervention. Whilst I was sympathetic regarding the claimant's health difficulties I expressed serious concern about her failure to advance her case. Until this morning, she had not sought to produce evidence of her medical conditions that she says

prevented her from complying with the Orders made by EJ Dick to either the respondent or the tribunal. Indeed, hard copies were passed to Mr Olatokun at the start of the hearing but ultimately it was not considered necessary for me to see this evidence. I emphasized that tribunal orders were not to be ignored. If parties are unable to comply with directions because of illness, they are expected to give proper notice of that (unless they are so incapacitated that this proves impossible). The claimant was not incapacitated to the extent that she could not make contact with the respondent and explain her difficulties. Indeed, her daughter made contact with the respondent in response to communications chasing the claimant to comply. Steps should have been taken to inform both the respondent and the tribunal of the position regarding her health (with supporting evidence) with an indication of prognosis, and if appropriate accompanying this with an application to vary the orders.

3. Be that as it may, whilst I considered the respondent had grounds to be aggrieved, I was not satisfied that the case was one in which the delay was inordinate and inexcusable delay of the kind which gives rise to a substantial risk that a fair hearing is impossible or is likely to cause serious prejudice to the respondent, nor was it so disrespectful or abusive to the tribunal so as to meet the test in Evans and anor v Commissioner of Police of the Metropolis [1993] ICR 151, CA (referring to Birkett v James 1978 AC 297, HL). The respondent made no reference to Evans or any other case law in its application or submissions today and accordingly did not appear to be relying on any other authority. Accordingly I have approached this issue on the basis of the general principles set out in that seminal case and guidance from the appellate courts that flows from that decision.

4. On behalf of the respondent, Mr Olatokun confirmed that the respondent had completed the disclosure process as far as it considered necessary. He also confirmed (after being given time to take instructions during the hearing this morning) that the respondent's key witnesses, KP and DB, are still employed by the respondent and able to give evidence. As for RS, it did not appear that any of the issues involved her and it is far from clear if or why she might be called as a witness. Notwithstanding this, even though she had left the respondent's employment, the respondent had a forwarding address for her and could secure a witness summons if she was not willing to cooperate with any requests to give evidence.

5. Mr Olatokun raised the fact that only as recently as the beginning of this week, there had been late disclosure by the claimant of: 1) a WhatsApp message from the claimant to Shelley Ann Campbell (Head of Housing) in July 2022; 2) a recording the claimant made of the meeting she had with HR in November 2022 (accompanied by her union representative); and witness statements from two former colleagues (BT and CS) that she intends to rely on at trial. The claimant said she had provided a transcript of the recording to the respondent in circa April last year and was sending the recording to enable it to be corroborated. I interpose here that it seems this recording was made without the knowledge or agreement of the respondent, although the claimant asserts that she believed her union representative would have

informed them (without explaining why she held such a belief). Whilst I expressed concern about the recording being made potentially surreptitiously, especially given the presence of her union representative at that meeting, I could not see how this late disclosure caused prejudice to the respondent and the respondent did not raise any other arguments about prejudice in its application or in submissions today.

6. The claimant confirmed that, as far as she was concerned, she had completed full disclosure now. The only document she was seeking from the respondent was a recording she believes existed of a meeting with KP and BD that immediately followed a serious violence panel meeting the same day sometime in February 2021. She maintains that the discriminatory remarks that form part of her case were made during that meeting but she is unable to give a specific date. She says the respondent has told her that such meetings were (and are) not recorded and therefore there is no such recording to disclose. The claimant does not accept that this meeting, along with all other Teams meetings, was not recorded. I observe that the claimant's insistence that meetings were recorded appears to be somewhat at odds with her remarks today that she felt the need to record the later Teams meeting (referred to above) that she attended with her union representative, with or without the respondent's knowledge. Given the vagueness about the date of the meeting I decided not to make any formal specific disclosure order but I have been given an assurance by Mr Olatokun that he will convey to his instructing solicitor that there is an expectation that they will look to see if it can be established when the meeting took place in February 2021 and whether a recording did exist or not. If it exists it must be disclosed. If it did exist but does not any more, the respondent needs to explain in written correspondence to the claimant why it no longer exists and is irretrievable. It will be a matter for the claimant to decide whether to make any further application once the respondent has been given the opportunity to take these steps but clearly it cannot be ordered to be disclosed if it does not exist. The expectation is that the respondent will undertake this search within the next four weeks and revert to the claimant as described above within that time.

7. Save for finalizing the tribunal bundle (file of evidence) and exchanging witness statements, this case is ready for trial. Whilst delay is always unfortunate and detrimental to all concerned, I am satisfied that a fair hearing can take place and that there is not sufficient prejudice to the respondent to merit striking out the claim either in part or in its entirety.

8. Turning to the application for strike out or a deposit in relation to the race discrimination claim, the respondent asserts that the claimant has vacillated in relation to her stated protected characteristic and also advances an argument that her purported ethnicity of East African Indian cannot be a recognised ethnic group. It is surprising that this application was not made until less than three weeks prior to this hearing, having been made by email on 20 August 2025, some considerable time after the notice of this PH to determine strike out on other grounds had been sent out. The respondent makes reference to the House of Lords decision of Mandla v Dowell Lee

[1983] ICR 385 in its application but this was not expanded on in submissions before me today and no copy of that authority was provided.

9. I also raised with Mr Olatokun the fact that the respondent's application appeared to relate to the whole claim of discrimination and was not in any way targeted. I noted that certain claims and allegations in the list of issues previously identified by EJ Dick were not dependent on the claimant's asserted protected characteristic at all. Mr Olatokun agreed today that the application was limited to issues identified at paragraphs 14.1, 14.4, 14.5, and 14.9 to 14.12 of EJ Dick's case management order made on 17 July 2024 only.

10. Notably EJ Dick had already considered and refused an application for strike out and/or deposit made by the respondent in relation to claims against BD at the PH on 17 July 2024. The detail of that earlier application was not before me and this very recent application failed to clarify if and how it was different so as to satisfy me that I would not be trespassing on a decision that had already been made in relation to primarily the same (previous) arguments. Mr Olatokun who appeared for the respondent was unable to assist me and could not direct me to, or provide me with, any detail about the basis of the previous application.

11. When hearing from the claimant, she suggested that there had been extensive discussion about the protected characteristic she was relying on at that hearing. I noted that paragraph 42 of EJ Dick's record of the PH on 9 February 2024 and also paragraph 13 of his record of the subsequent PH on 17 July 2024 contained a summary of the claimant's position regarding her ethnicity. I therefore was not satisfied that this was a new or different application being advanced to the one EJ Dick ruled upon at the last PH in July 2024, especially taking account of the fact that the respondent has known about this for over a year prior to its most recent application. I am also not persuaded that it is a matter that could be determined without hearing evidence.

12. Be that as it may, I recognize some force in the respondent's position. The claimant had initially described herself as British Asian for the purposes of her claim under the Equality Act 2010 but both her comparators (KP and BD) share that characteristic and so the claimant went on to assert that she was of East African Indian heritage and seeks to rely on that as her ethnicity (and has done since the PH in February 2024). More importantly when hearing from the claimant today, she volunteered to me that she believed that KP was not aware of her East African Indian ethnicity until KP asked her about it in or around January 2021. Furthermore, significantly, she also advanced today that she did not consider that BD's treatment of her was because she was of East African Indian ethnicity (indeed, she was uncertain if he knew this or not but thought KP would have told him). Instead she claimed that he behaved as he did because he sided with KP.

13. Whilst that could undermine the claimant's allegations of direct discrimination, it does not necessarily preclude a claim of harassment (which the claimant relies upon as an alternative).

14. I consider the matter to be finely balanced but I have decided not to make a deposit order on this occasion. Even though I have real doubts about the claimant's prospects of succeeding in the claims identified above such that they might be said to have little prospect of success, it remains a matter of my discretion whether or not to make such an order and I am not compelled to do so. Having carefully considered the position, I have decided not to order a deposit primarily because I am concerned that by doing so I would be trespassing upon a decision already made by EJ Dick. Furthermore unless the parties can reach a settlement by agreement, a trial will be necessary to determine the remaining claims that would not be the subject of the deposit order. It seems to me better for the matters to be determined on the basis of the evidence.

15. That said, I warned the claimant that it is not in her interests to be pursuing weak claims as these only serve to dilute and distract from stronger ones. Furthermore, despite the 'no costs' presumption that applies in tribunal proceedings and the fact that costs orders remain exceptional, if it is found that either party has pursued a claim that has no reasonable prospect of success, that party is at risk of the other seeking such a costs order which might be granted by a tribunal. The fact that I have not made a deposit order today has no bearing on that possibility. For these reasons I urged the claimant to carefully reflect on each of the claims she is seeking to bring.

Authorised by
Employment Judge Wyeth

Date: 19 September 2025

Sent to the parties on:
.23 September 2025.....

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For the Tribunal Office

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