Reference number
2303401-2024
2304717-2025

EMPLOYMENT TRIBUNALS

London South Employment Tribunal
8 August 2025 (video)

Claimant:	Mojisola Paul
Respondent:	United Learning Trust
Before:	Judge M Aspinall (sitting alone as an Employment Judge)
Appearances:	Mr U Alukpe, Solicitor for the Claimant Miss L Halsall, Counsel for the Respondent

Judgment

The claims are struck out for failure to comply with the express terms of the Unless Order made on 25 June 2025. They would, otherwise, be struck out under Rule 38 on the basis that the conduct of the case has been unreasonable and because in all the circumstances, a fair trial is no longer possible.

At the conclusion of the hearing on 8 August 2025, I gave oral reasons for my decision to strike out the claims. The Claimant's solicitor, Mr Alukpe, requested full written reasons at the hearing. These written reasons are provided pursuant to that request.

Reasons

BACKGROUND

1. The Claimant was employed by the First Respondent as a teacher from approximately 2018 until her employment was terminated in 2024. During her employment, various incidents occurred which form the basis of her complaints, with some allegations dating back to 2021. The employment relationship deteriorated over time, with the Claimant raising concerns about her treatment which she alleges amounted to discrimination and harassment on grounds of race and disability.

2. The Claimant presented her first claim to the Employment Tribunal on 12 April 2024, setting out various complaints against multiple respondents within the United Learning Trust structure. Subsequently, she presented a second claim on a later date, which initially contained extensive allegations dating back to 2021 and earlier, overlapping substantially with matters that should have been included in the first claim if they were to be pursued.

3. The case has been subject to extensive case management difficulties from an early stage. Employment Judge Corrigan made case management orders in September 2024 attempting to resolve pleading deficiencies and requiring the Claimant to clarify and properly particularise her claims. These orders were not satisfactorily complied with, necessitating further case management intervention.

4. At a preliminary hearing on 25 June 2025, I identified serious ongoing problems with the

pleadings and case management compliance. The claims remained poorly particularised, the list of issues was inadequate, and there was continuing non-compliance with previous judicial orders. The Respondents faced significant difficulties in understanding the case they were required to meet and in preparing an adequate response.

5. I made specific case management orders on 25 June 2025, including an Unless Order with a deadline of 2 July 2025, designed to require the Claimant to remedy these fundamental defects and bring the case into a manageable state for fair determination by both parties and the Tribunal.

COMPLAINTS MADE IN THE CLAIM

6. The Claimant's claims are extensive and encompass multiple forms of discrimination and other statutory complaints. The race-related claims include allegations of direct race discrimination, indirect race discrimination, harassment on grounds of race, and victimisation under the Equality Act 2010. The disability-related claims comprise allegations of direct disability discrimination, discrimination arising from disability, and failure to make reasonable adjustments, also under the Equality Act 2010. Additionally, the Claimant brings a claim for automatic unfair dismissal for health and safety reasons under section 100 of the Employment Rights Act 1996. The Claimant seeks remedies including compensation for injury to feelings, financial losses including past and future loss of earnings, reinstatement or re-engagement, and such other remedies as the Tribunal considers just and equitable.

MATTERS ARISING AT THIS HEARING

7. The primary issues before the Tribunal at this resumed hearing were procedural rather than substantive, arising from the case management difficulties that had plagued this case since its inception.

8. The first issue was whether the Claimant had complied with the Unless Order made on 25 June 2025, specifically paragraph 9, which required by 4pm on 2 July 2025: (a) redoing the particulars of the second claim limiting them to matters arising after 12 April 2024; (b) removing all allegations and matters from the second claim dating before 12 April 2024; and (c) correcting and amending the draft list of issues providing proper legal and factual basis for each head of claim.

9. The second issue was whether the Claimant had properly complied with paragraph 14 of the case management orders, which gave permission to apply in writing to amend the first claim, requiring any such application to justify the amendment on time limit basis and under the Selkent principles, with the respondent having 14 days to respond and any application to be considered at the resumed hearing on 8 August 2025.

10. A related issue was the status and validity of documents submitted by the Claimant's solicitor on 6 August 2025, purporting to be an "amended ET1 grounds of the claimant's first claim" and whether this constituted a proper application to amend or an unauthorised attempt to circumvent the proper procedure.

11. The fourth issue was whether the revised list of issues provided adequate legal and factual basis for each head of claim as required by the Unless Order, or whether it merely consisted of cross-references to paragraph numbers in other documents.

12. If the Unless Order had not been complied with, the issue arose as to whether the claims should be automatically struck out pursuant to the terms of that order. Alternatively,

whether the claims should be struck out under Rule 38 of the Employment Tribunal Procedure Rules 2024 on grounds that there was no reasonable prospect of a fair trial, or that the proceedings were conducted unreasonably or in a manner calculated to obstruct the just disposal of the case.

THE HEARING

13. This was a resumed preliminary hearing conducted by video conference using the Cloud Video Platform. The hearing had originally commenced on 25 June 2025 when I made case management orders including an Unless Order and was adjourned to 8 August 2025 for compliance to be reviewed.

14. The Claimant Mrs Mojisola Paul attended and was represented by Mr Alukpe, solicitor. The Respondents were represented by Miss Halsall of counsel. Initial technical difficulties with audio feedback were resolved by having the Claimant and her solicitor share a single connection.

15. I reminded all participants that the hearing was being recorded and that making unauthorised recordings or broadcasts of any part of the proceedings constituted a criminal offence. The hearing proceeded as a case management hearing to review compliance with the previous orders and determine next steps.

16. The bundle prepared for the hearing included the original claims, the case management orders from 25 June 2025, correspondence between the parties, and various iterations of amended pleadings and lists of issues. Particular attention was paid to documents submitted on 6 August 2025 by the Claimant's solicitor.

17. During the hearing, I examined in detail the extent of compliance with each element of the Unless Order, with input from both representatives. The hearing included examination of specific examples from the documentation to illustrate the issues arising. I adjourned the hearing at 12:15pm for judicial consideration before delivering judgment.

THE LAW

18. The power to make Unless Orders is contained in Rule 39 of the Employment Tribunal Procedure Rules 2024, which provides: *"An order may specify that if it is not complied with by the date specified the claim, response or reply, or part of it, must be dismissed without further order. If a claim, response or reply, or part of it, is dismissed on this basis the Tribunal must give written notice to the parties confirming what has occurred."*

19. The principles governing Unless Orders were established in cases such as ***Blockbuster Entertainment Ltd v James*** **[2006] IRLR 630 (EAT)** at paras 17-20, 23, where Elias J held: *"Where an unless order is made and not complied with, the sanction specified takes effect automatically. The tribunal has no residual discretion unless an application for relief is made within the stipulated period."* As to relief from sanction: *"A party may apply for relief but the burden rests on them to show that it is in the interests of justice for relief to be granted."*

20. The Employment Appeal Tribunal has emphasised that Unless Orders are a draconian procedural tool and should be used sparingly as a last resort. In ***Mohammed v Guy's and St Thomas' NHS Foundation Trust*** **[2023] EAT 16** at paras 51-53, 60-62, the EAT stressed that such orders must be crystal clear in their requirements and consequences, enabling parties to understand precisely what compliance entails. HHJ Tayler has provided guidance that Unless Orders must be precisely drafted so that compliance or non-

compliance can be easily determined, with any ambiguity resolved in favour of the party required to comply, and that consequences must be clear and proportionate.

21. Rule 38(1)(c) of the Employment Tribunal Procedure Rules 2024 provides that *"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... for non-compliance with any of these Rules or with an order of the Tribunal."*

22. In ***Abegaze v Shrewsbury College of Arts and Technology*** **[2009] UKEAT/0171/09/MAA** at para 23, Underhill J held: *"Striking out is a draconian measure and should be reserved for cases where there is a persistent and serious default such that a fair trial is no longer possible or the defaulting party has demonstrated a disregard for the Tribunal's process."*

23. ***Bolch v Chipman*** **[2004] IRLR 140 (EAT)** at para 35 emphasised: *"The Tribunal must consider whether a lesser sanction would suffice and whether the party's conduct has made a fair hearing impossible. Only in extreme cases should a claim be struck out for non-compliance"* (per HHJ McMullen QC).

24. In ***HM Prison Service v Liddle*** **[2006] IRLR 203 (EAT)** at para 24, Elias J stated: *"Where there is a prolonged and unexplained delay, particularly one that causes prejudice to the other party or undermines the administration of justice, striking out can be justified."*

25. The overriding objective contained in Rule 3 requires tribunals to deal with cases fairly and justly, including ensuring that the parties are on an equal footing, saving expense, dealing with cases in a manner proportionate to their complexity and importance, avoiding delay, and ensuring cases are dealt with expeditiously and fairly.

26. While not binding on Employment Tribunals per se, the Court of Appeal's approach in ***Denton v TH White Ltd*** **[2014] EWCA Civ 906** at paras 24-38 provides a useful structured framework for considering relief from sanctions. The Denton approach requires consideration of: (1) the seriousness and significance of the failure to comply with the order; (2) why the default occurred; and (3) all the circumstances of the case, including the need to deter future non-compliance and the particular importance of the overriding objective. In Mohammed v Guy's and St Thomas' NHS Foundation Trust [2023] EAT 16, the Employment Appeal Tribunal confirmed that while Denton is not directly applicable to Employment Tribunal proceedings, its structured approach can assist tribunals in ensuring comprehensive consideration of relevant factors when determining relief from sanctions applications.

27. The principles governing applications to amend claims are set out in ***Selkent Bus Co Ltd v Moore*** **[1996] ICR 836 (EAT)** at pp 842-843. The Employment Appeal Tribunal established that all amendments to claims or responses require the permission of the tribunal. When considering whether to grant permission to amend, the tribunal should consider all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. The relevant factors include: (a) the nature of the amendment - whether it is a minor matter such as the correction of clerical and typing errors, or labels, or whether it is a substantial alteration pleading a new cause of action; (b) the applicability of time limits - if a new complaint or cause of action is proposed to be added by way of amendment, it is essential for the tribunal to consider whether that complaint is out of time and, if so, whether the time limit should be extended; and (c) the timing and manner of the application - an application

should not be refused solely because there has been a delay in making it, but delay is a factor to take into account in deciding whether granting the amendment would cause injustice or hardship to the other party. The case of ***Chandok v Tirkey*** **[2015] ICR 527 (EAT)** at para 15 established that an ET1 is not merely a document that starts proceedings but constitutes the claim itself, and amendments require judicial permission.

28. The ***Henderson v Henderson*** **(1843) 3 Hare 100** principle at pp 115-116 prevents parties from bringing claims that should have been brought in earlier proceedings, constituting an abuse of process.

MATERIALS AND SUBMISSIONS

29. The primary evidence before the Tribunal consisted of documentary evidence in the hearing bundle, including the original case management orders, correspondence between the parties, and various versions of pleadings and lists of issues submitted by the Claimant.

30. Of particular significance was an email sent by the Claimant's solicitor to the Tribunal at 9:50am on 6 August 2025, copied to the Respondents' solicitors. This email was headed "URGENT" and requested that "the attached amended ET1 grounds of the claimant's first claim" be placed on file "before an employment judge". Crucially, the email stated: "The claimant was granted permission to amend her first claim by the order of Judge Aspinall dated 25th of June 2025 and no deadline was stipulated."

31. I examined the case management orders made on 25 June 2025 in detail. Paragraph 14 of those orders provided: "The claimant has permission to apply in writing to amend the first claim to include matters currently in the second claim that should be in the first claim. Any such application must justify the amendment on time limit basis and under the Selkent principles. The respondent will have 14 days to respond to any such application. Any application can be considered at the reconvened preliminary hearing on 8 August 2025."

32. The comparison between what the order said and what the Claimant's solicitor represented it as saying revealed significant discrepancies. The order gave permission to apply to amend, not permission to amend. The order contained implicit deadlines through the requirement for the respondent to have 14 days to respond before the matter was considered on 8 August 2025.

33. The revised list of issues submitted showed extensive cross-referencing to paragraph numbers in other documents rather than setting out the legal and factual basis for each head of claim. For example, paragraph 39 relating to harassment on grounds of race contained references to 79 individual paragraphs plus 39 paragraph ranges, totalling 118 separate cross-references to other parts of the bundle.

34. The documents submitted on 6 August 2025 showed that the first claim had been expanded from 9 pages to 38 pages, incorporating material that had been removed from the second claim without proper application or judicial permission. Many of the allegations incorporated dated back to 2021, raising significant time limit issues that had not been addressed.

35. Submissions were made by Mr Alukpe regarding his understanding of the orders and his approach to compliance. He stated that he had considerable experience and had never been asked by another judge to provide factual details in a list of issues beyond paragraph references. However, he acknowledged that my order had been clear and should have

been complied with regardless of his previous experience.

FINDINGS OF FACT AND APPLICATION OF LAW

The Unless Order of 25 June 2025

36. I find as a matter of fact that the Unless Order made on 25 June 2025 was clear, express and unambiguous in its requirements. The order carried an automatic strike-out if not complied with by 4pm on 2 July 2025. Among other requirements, paragraph 9(c) specifically required the Claimant to "*correct and amend the draft list of issues providing proper legal and factual basis for each head of claim*" by that deadline.

Separate Permission to Apply to Amend

37. The case management orders of 25 June 2025 also contained, at paragraph 14 (which was separate from the Unless Order), permission for the Claimant to apply in writing to amend the first claim. Crucially, this was permission to apply to amend, not permission to amend. The paragraph required any such application to justify the amendment on time limit basis and under the *Selkent* principles, allowed the respondent 14 days to respond to any such application, and provided that any application could be considered at the reconvened preliminary hearing on 8 August 2025. The structure of this paragraph made the time constraints and procedural steps clear.

Failure to Comply with the List of Issues Requirement

38. I find that the Claimant has failed to comply with paragraph 9(c) of the Unless Order to any material extent. What the Claimant provided by way of a "revised list of issues" was not a document that set out the legal and factual basis for each head of claim. Instead, it was an extended set of cross-references to paragraph numbers scattered across other documents.

Paradigmatic Example of Non-Compliance

39. One representative example demonstrates the scale of this failure. Paragraph 39 of the revised list of issues, which purported to address harassment related to race, contained 79 individual paragraph references and 39 paragraph ranges—totalling 118 separate cross-references to other parts of the bundle instead of providing the required factual and legal basis for the harassment claims. This is documented at paragraph 33 above and exemplified in the hearing bundle. I heard nothing to persuade me that such an approach satisfied the express terms of my order.

The Burden Created by Cross-Referencing

40. This cross-referencing approach places an unreasonable burden on both the Tribunal and the Respondents to locate, read and understand multiple paragraphs across different documents to attempt to discern what allegations are being made and on what legal and factual basis. The approach obscures rather than clarifies the case and is the antithesis of what was ordered. It renders impossible any determination of which allegations the Claimant has permission to pursue and which represent unauthorised additions to her pleaded case.

The Unauthorised Amendment of 6 August 2025

41. On 6 August 2025, the Claimant's solicitor sent to the Tribunal a document styled "*amended ET1 grounds of the claimant's first claim*" asserting that *"the claimant was granted permission to amend her first claim by the order of Judge Aspinall dated 25th of June 2025 and no deadline was stipulated."* I find this statement was factually incorrect on both elements. Paragraph 14 of my case management orders granted permission to apply to amend, not permission to amend, and contained clear time constraints through the

requirement for 14 days' response time before consideration on 8 August 2025. This constitutes a breach of professional standards that undermines the integrity of the tribunal process, as emphasized in *Mohammed v Guy's and St Thomas' NHS Foundation Trust*. The 6 August document sought to expand the first claim from 9 pages to 37-38 pages, incorporating extensive pre-12 April 2024 allegations dating back to 2018-2022 without addressing time limits or *Selkent* principles, as established in *Chandok v Tirkey* that an ET1 constitutes the claim itself and cannot be amended without judicial permission.

42. I find that no proper application to amend the first claim was made despite the express requirement in paragraph 14 of the case management orders. What was submitted was purported amended particulars without addressing time limits, *Selkent* principles, or any of the legal requirements for amendment applications.

43. The 6 August document sought to expand the first claim substantially. The material before me shows the first claim was expanded from a short pleading to a lengthy 37-38 page narrative, while the second claim runs to 38 pages, as evidenced by the documents submitted on 6 August 2025 detailed at paragraphs 30-34 above. The unauthorised amendments incorporated extensive pre-12 April 2024 allegations, many going back to 2018-2022, for example those pleaded at pages 2-12 and 34-36 of the "amended" first claim. These raise obvious time-limit issues which were not addressed as *Selkent* requires. As established in *Chandok v Tirkey*, an ET1 constitutes the claim itself and cannot be amended without judicial permission.

Circular Problem in Compliance Attempt

44. I find that the approach taken represents an abuse of process, attempting to circumvent the proper procedures for amendment by incorporating unauthorised changes and then building a "revised" list of issues based on those unauthorised amendments. This approach constitutes an abuse of process contrary to the *Henderson v Henderson* principle. The fundamental flaw is that many of the paragraph references in the purported 'revised' list of issues refer to allegations contained in the unauthorised amendments to the first claim submitted on 6 August 2025. This creates a circular problem: the list of issues relies upon amendments for which no permission was sought or granted, while those amendments were themselves incorporated without compliance with the express requirements of paragraph 14 of my case management orders. The Claimant cannot cure non-compliance with one part of my orders by relying upon non-compliance with another part.

Rejection of Representative's Submissions

45. I reject entirely Mr Alukpe's submission that his approach to the list of issues reflects normal or acceptable practice. Having considerable judicial experience myself, it is emphatically not my experience that Employment Judges would permit the approach taken of simply listing vast numbers of paragraph references from other documents and leaving it to the Respondents and the Tribunal to locate them, read them, understand them and discern for themselves the factual and legal basis upon which they are relied. Such an approach is fundamentally misconceived and represents an abdication of the basic responsibility of a party to clearly set out their case.

Consequence for Case Management

46. The Respondent's strike-out application accurately captured the consequence of the Claimant's approach: the case remained impossible to manage, the Respondent could not fairly understand the case to meet, and the Tribunal could not identify a workable list of issues. A list of issues must clearly identify what allegations are made, what facts are

relied upon, and what legal basis is advanced for each head of claim. Mr Alukpe's approach would render case management impossible and place an unreasonable and inappropriate burden on all other participants in the proceedings.

Application of Unless Order

47. The Unless Order was not complied with in any material sense. The Claimant did not deliver a list of issues that set out the legal and factual basis for each head of claim; rather, she provided a cross-referencing matrix which obscures rather than clarifies. The example at paragraph 39 (118 cross-references) is paradigmatic of that failure.

48. The Claimant also failed to follow the only lawful route to enlarge the first claim, namely a written application to amend addressing *Selkent* and time limits. This failure to follow proper amendment procedures violates the *Selkent* principles set out at paragraph 27 above. The "amended ET1" sent on 6 August 2025 cannot retrospectively convert non-compliance into compliance; it compounded it.

49. In those circumstances, and there being no timely or substantive application for relief from sanctions, the automatic consequence of the Unless Order is that the claims are dismissed. The principles established in Blockbuster Entertainment Ltd v James apply: the sanction takes effect automatically without residual discretion unless an application for relief is made within the stipulated period.

Relief from Sanctions

50. Despite no application being made, I nevertheless considered relief in case I retain a residual discretion, applying the principles established in the authorities.

51. While the *Denton* approach in the civil courts is not binding on this Tribunal, it provides a useful framework for assessing relief from sanctions that I have applied alongside the established Employment Tribunal authorities. This structured approach confirms that relief from sanctions would be inappropriate in all the circumstances.

52. **First, the seriousness and significance of the breach:** The breach was plainly serious and significant. It went to the heart of case management, rendering the proceedings unmanageable. The failure persisted for months despite clear warnings and affected the fundamental requirement to provide a pleaded case and then a workable list of issues that would enable fair determination of the claims.

53. **Second, the reason for the default:** No good reason has been advanced for the breach. The order was clear and unambiguous. The solicitor's letter of 6 August 2025 demonstrated not misunderstanding but misrepresentation of what had been ordered, claiming permission to amend had been granted when only permission to apply had been given.

54. **Third, all the circumstances:** The history of non-compliance dating back to Employment Judge Corrigan's orders in September 2024 demonstrates persistent disregard spanning over 15 months. The default has caused real prejudice to the Respondents and undermined the administration of justice. The overriding objective would not be served by relief, which would necessitate converting the listed final hearing into further preliminary process and relisting into 2027/2028. This would be neither just nor proportionate, applying the principles in *Blockbuster* and *Liddle*.

Alternative Strike Out

55. Even if I were wrong about the operation of the Unless Order, I would exercise my discretion to strike out the claims under Rule 38(1)(c). Following *Abegaze v Shrewsbury College*, striking out is justified where there is persistent and serious default such that a fair trial is no longer possible or the defaulting party has demonstrated a disregard for the Tribunal's process. The history of non-compliance dating back to Employment Judge Corrigan's orders, combined with the current failures, demonstrates persistent and serious default spanning over 15 months.

56. As stated in *Liddle*, where there is prolonged and unexplained delay that causes prejudice to the other party or undermines the administration of justice, striking out can be justified. The case management difficulties are entirely of the Claimant's making through her legal representative and demonstrate a disregard for the Tribunal's process that has made a fair trial no longer possible.

57. I have considered whether a lesser sanction would suffice (per *Bolch*), but further indulgence would require converting the November 2025 final hearing to a preliminary hearing, finding further hearing time for complex amendment applications, and likely relisting for final hearing in 2027 or 2028. This would be prejudicial to the Respondents and not in the interests of justice, particularly given the age of some allegations.

Other considerations and findings

58. I have carefully considered whether the defaults are those of the representative rather than the Claimant. Ultimately, the proceedings are the Claimant's. The Tribunal cannot re-plead the case for her, nor can the Respondent be required to divine a case from sprawling cross-references and unauthorised amendments. The orders were clear; the route to amendment was clear; the consequences of non-compliance were clear.

59. Given the serious and significant breach of the Unless Order, the absence of any good reason for non-compliance, and the lack of any application for relief from sanctions, the automatic strike-out is inevitable under the *Blockbuster* principles. The persistent procedural defaults over 15 months, combined with the demonstrated disregard for tribunal processes, render any alternative outcome inconsistent with the authorities and the overriding objective.

60. The enforcement of these procedural standards serves not only the interests of the immediate parties but also the wider public interest in maintaining efficient tribunal administration. Employment Tribunals face significant resource constraints and substantial caseloads. Permitting persistent non-compliance with clear case management orders would undermine the system's ability to provide anything close to timely justice to all users and erode public confidence in the tribunal's capacity for fair and efficient dispute resolution.

CONCLUSION

61. For the reasons set out above, the Claimant failed to comply with the Unless Order of 25 June 2025. That breach was serious and significant, no good reason was advanced for it, and no application for relief from sanctions was made. By operation of the order's clear terms and in accordance with *Blockbuster*, the claims are automatically struck out.

62. In the alternative, applying Rule 38(1)(c), the persistent and serious procedural defaults over a prolonged period have made a fair trial impossible. No lesser sanction would suffice (*Bolch*). This accords with the guidance in *Abegaze* and *Liddle*.

63. Upholding robust compliance with case management orders serves both the interests of justice between the parties and the wider public interest in the efficient administration of justice. Employment Tribunals must maintain procedural standards to ensure fair and timely resolution of disputes for all users of the system.

64. The claims in both proceedings are struck out in their entirety.

APPROVED
Judge M Aspinall
(sitting as an Employment Judge)
10th August 2025