



EMPLOYMENT TRIBUNALS

Claimant: Janine Whyte-Weedon

Respondent: The Home Office

Heard at: Manchester (by video) **On:** 17th July 2025

Before: Employment Judge Cline (sitting alone)

Representation

Claimant: Mr Robert McHale, lay representative

Respondent: Mr Andrew Lyons, counsel

JUDGMENT having been sent to the parties on 20th August 2025 and written reasons having been requested in accordance with Rule 60(4)(b) of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided.

REASONS

Introduction and Background

- 1) By way of her ET claim form received by the Tribunal in September 2023, the Claimant, Janine Whyte-Weedon, brought claims for race discrimination, unfair dismissal and victimisation in the form of dismissal. The Claimant was employed by the Home Office from 1992 until her summary dismissal on 15th June 2023 on the grounds of gross misconduct in relation to threatening comments made to a colleague. It is relevant for reasons that will be set out below that, in the ET1 claim form, her representative was noted as being Mr Robert McHale and his postal address, telephone number and email address were provided in the usual way.
- 2) A bundle of documents was prepared by the Respondent for use at the hearing.

References to documents within that bundle herein will be by way of square brackets, for example [53] or [12-17].

Relevant Chronology

- 3) As noted above, the ET1 claim form [7] was received by the Tribunal in September 2023; the actual date is not clear because there appear to have been technical difficulties in issuing the claim online; but nothing turned on this matter so I did not investigate it in great detail. On 27th September 2023, a standard letter was sent to the parties listing the matter for a preliminary hearing for case management by video on 18th January 2024 [22]. It can be seen from the Tribunal's letter to the parties dated 15th January 2024 [30] that the Respondent was re-sent a copy of the claim form by email as it was not sent previously to the agreed national address. The ET3 and grounds of resistance [31] were received by the Tribunal on 25th February 2024 (with permission then given for the late response to be allowed in the circumstances) and denied all liability to the Claimant, suggesting that the claim had not been particularised sufficiently but, nonetheless, setting out their response to the claim in some detail. The preliminary hearing was then re-listed to take place by video on 8th October 2024 [48].
- 4) That preliminary hearing took place on 8th October 2024 and a case management order was made by Employment Judge Allen on the same day [50]; at that hearing, the Claimant was represented by Mr McHale and the Respondent by Mr Lyons, both of whom appeared at the hearing before me on 17th July 2025. The detail of Employment Judge Allen's order will not be repeated here but the following points are relevant:
 - a. The matter was listed for a half-day public preliminary hearing, by video, on 7th March 2025 to consider time limit issues in respect of the race discrimination claims (as the matters referred to occurred between July 2021 and February 2023);
 - b. At that preliminary hearing, the Tribunal would also hear the Respondent's application for a deposit order(s) on the basis that the claim (or parts of it) has little reasonable prospects of success;

- c. The final hearing was listed to take place for 5 days commencing on 1st December 2025 (in person at Manchester);
 - d. Although some of the details of the Claimant's claim had been set out, she was ordered to provide further particulars, by 19th November 2024, of two parts of her claim "briefly and without a general narrative", being ordered to "list each of the five or six things which she says Mr Robertson did which amounted to acts of direct discrimination" (having made some broad allegations in respect of the race discrimination claim which it would not have been possible to determine), as well as "the things which she says she said in the meeting on 4 April 2023 with Maggie Tighe and Zubair Patel, which are contended to be a protected act or acts";
 - e. The Respondent was given leave to provide an amended response by 10th December 2024 following clarification of the issues and was required to confirm their position on the claims as clarified by the Claimant (that is, whether they deem them to be further particulars of the existing claim or assert that leave to amend is required); and
 - f. A list of issues was annexed to the order in the usual way on the basis that the further information set out above would be provided in due course.
- 5) On 5th December 2024, the Respondent's solicitor sent an email [64] to the Tribunal (copying in Mr McHale at the email address provided in the ET1) noting that the Claimant had not complied with the order to provide further particularisation of her claim by 19th November and asking, as a result, for an extension of time to file the response. On 19th December [65], Employment Judge Allen allowed the Claimant an extension until 30th December to provide the required further particularisation and extended time for the remaining directions accordingly. It is noted that this extension was granted for the reasons set out in the Claimant's email of 19th November (which did not appear to be included in the hearing bundle for 17th July 2025 and is the same date that the further particulars were due), in which she said that: "Unfortunately, I have had no response from my Union Representative for over a week and have had to ring my Union who

have advised I send this email until another representative can be sought. I do apologise for the short notice but was hoping Mr McHale would have contacted me at some stage today". In his letter granting the extension, Employment Judge Allen directed that the Claimant "must provide those lists by that date, whether or not she is able to speak to a representative".

- 6) On 13th January 2025, the Respondent's solicitor sent an email [67] to the Tribunal (copying in Mr McHale at the email address provided in the ET1) noting that the preliminary hearing is listed to take place on 7th March and pointing out that Claimant has still not provided the further particularisation despite their having written to Mr McHale on 21st November, 27th November, 5th December, 17th December, 8th January (and leaving a voicemail on the Claimant's representative's telephone) and 10th January; in fact, no response from Mr McHale had been received at all. Within the body of that email, the Respondent applied to strike out the claim (or, alternatively, for an unless order to be made) on the basis that orders have not been complied with and the claim has not been actively pursued; and a request was made for this application to be determined on the papers.
- 7) On 4th February 2025, the Respondent's solicitor sent an email [69] to the Tribunal (copying in Mr McHale at the email address provided in the ET1) noting that they had not yet heard from the Tribunal in respect of their application to strike out the claim and had also not heard from the Claimant or her representative. It is also noted that, on 27th January, an email was sent to the Claimant directly asking if Mr McHale is still acting for her and no response was received.
- 8) In light of the above emails, Employment Judge Ross wrote to the parties on 5th February 2025 [72] to inform them that striking out the Claimant's claim is being considered and that, if she wishes to object to this course of action, either she or her representative must reply to the Tribunal by 14th February 2025.
- 9) On 14th February 2025 (the final day for compliance with Employment Judge Ross' strike-out warning), Mr McHale sent an email to the Tribunal (copying in the Respondent's representative) [74]. The email, in full, reads as follows:

Good afternoon,

My apologies for the court in a last minute response to this email.

I am currently helping Ms Whyte- Weedon after finding out that she is struggling for union representation.

I have only found this out in the last day or so as I am currently recovering from an assault on November 20th 2024 by ... that has left me with ligament damage in my right arm and associated trauma and distress from the attack and attempt to recover and be fully independent as I am struggling with my arm. I am awaiting an ultra sound scan and possible physio. I am happy upon request to furnish the court with any evidence that I have such as medical referral letter and crime reference number.

I therefore would be grateful if the court could relent from striking out this case in the interests of justice and fairness. I propose to sit down with Ms Whyte- Weedon in order to meet prior court directions and provide this to the court within the next 2-3 weeks maximum.

I am happy to respond to any queries or further clarification from the court or my learned friend.

Regards Robert McHale

10) On 19th February 2025, the Respondent's solicitor sent an email [75] to the Tribunal and to Mr McHale pointing out that, although Mr McHale claims to have been assaulted on 20th November 2024, the original order for further particularisation had a deadline of 19th November (the day before the alleged assault) and no reason has been provided as to why this was not met. In circumstances where there had been no explanation for the failure to engage at all until now, the Respondent said, the application to strike out the claim was maintained.

11) A letter dated 6th March 2025 was sent to the parties by Employment Judge Batten [76] saying that the claim would not be struck out on this occasion "[i]n light of the contents of the claimant's representative's email and the particular difficulties referred to". However, an order was also made for Mr McHale to supply evidence of the alleged assault (including the crime reference number and police report), a copy of the medical letter referred to, copies of all and any current NHS treatment appointment letters and an update on his recovery from the accident in November 2024, by way of GP report or similar. Unfortunately, no date for compliance with these directions

was specified but there was a warning that “[i]n the event that any of the above is not complied with, **the claimant is hereby warned that the claim risks being struck out in future** [bold type in the original]”. The preliminary hearing listed on 7th March was postponed until 4th April but, following correspondence from the Respondent in respect of counsel’s availability [81], the hearing was put back to 17th July.

- 12) On 2nd April 2025, Mr McHale sent an email (notably from an address which differed from that provided in the ET1) [88] enclosing documents including various medical appointment letters and an email containing a crime reference number. It was unclear if this email had been copied to the Respondent’s representative so an order was made by Employment Judge Leach on 14th May [90] for Mr McHale to do this and this letter was sent to both his email address in the ET1 and the address from which the 2nd April email had been sent. The letter also says that “[i]f the documents are to be included in the bundle of documents being prepared for the hearing in July, then the claimant must tell the respondent’s solicitors to include them”.
- 13) On 4th June 2025, the Respondent’s solicitor sent an email [92] to the Tribunal and to Mr McHale (seemingly to both the email addresses now being attributed to him) providing a summary of the procedural history as set out above, noting that they have still not had sight of the evidence regarding the assault, and asking that the Claimant be ordered to provide the information regarding the assault to the Respondent by 11th June and the further and better particulars (as ordered after the preliminary hearing in October 2024) by 18th June; the amended grounds of resistance would then be provided by 9th July.
- 14) On 20th June 2025, a letter was sent to the parties by the Tribunal and reads in full as follows:

The respondent’s email dated 4 June 2025 has been referred to Employment Judge Leach who writes to the claimant as follows:-

According to the respondent’s email, you have failed to comply with case management orders that were made at the hearing in October 2024. The time by which you should have complied with these orders has long since passed.

You were copied in to the email but have not provided any response.

Assuming the respondent is correct, your conduct of these proceedings is unacceptable. This claim is one that you have decided to bring. Having done so you must take all reasonable steps to advance your claim and that must include complying with Orders that the Tribunal makes. The respondent and the tribunal are incurring costs that they should not have to incur by trying to deal with this.

A failure to comply with these long outstanding orders is likely to have a detrimental impact on the preliminary hearing (now listed for 17 July 2025).

You must respond to this letter within 14 days to explain your position (by no later than 4th July 2025).

You must also note that an Employment Tribunal may strike out a claim on the grounds that it is not being actively pursued. Should you fail to respond then your claim may be struck out. When responding you should explain why your claim should not be struck out or to ask for an opportunity to provide your explanation at a hearing.

15) On 8th July 2025, the Respondent's solicitor sent an email [98] to the Tribunal and to Mr McHale (seemingly to both the email addresses now being attributed to him) noting that they have heard nothing further from Mr McHale or the Claimant and re-iterating their application to strike out the claim, which they invited the Tribunal to consider at the hearing listed on 17th July.

16) On 4th July 2025, Mr McHale sent an email to the Tribunal. It seems that the Respondent was not copied into this email, which presumably explains why their email of 8th July says that they had not heard anything further. In opening, Mr McHale said: "My profound apologies for the delay in complying with directions. There have been some personal issues with my health that have had an impact... However, I will now address the issues raised in directions that need clarifying". There then followed (and it will not be repeated or summarised here) a detailed response, running to what would probably be 2 pages of a standard Word document, to the direction for further particularisation (which, it is noted, was originally ordered to be done "briefly and without a general narrative" by 19th November 2024).

The Preliminary Hearing on 17th July 2025

- 17) The matter came before me on 17th July 2025. Having considered the Tribunal's electronic case record and the hearing bundle provided by the Respondent, I sought to establish from the outset that everyone had the same documentation. Mr McHale replied that he did not have the hearing bundle and, when I asked him to check his emails, he said that it was not there. A few minutes later, I asked him to check his emails again and, after a lengthy pause, Mr McHale confirmed that the bundle had indeed been sent to him and was in his junk email folder but that he is having difficulties accessing those emails. Mr McHale spoke at some length about how he now had three email addresses, some of which were difficult to access, and attempted to explain why he had not replied to a significant number of communications from both the Tribunal and the Respondent; however, he ultimately agreed with my suggestion that, as the Claimant's named representative, he was obliged to engage with the proceedings and act in accordance with the Rules in the same way as any other litigant or representative.
- 18) By way of background to his involvement in the matter, Mr McHale told me that he began assisting the Claimant as a union representative and that, once he finished in that role, he passed her case back to the union but then discovered that the Claimant had not received any further contact from them. Mr McHale said that, knowing the Claimant to be in receipt of benefits, suffering from mental health difficulties and going through the menopause, he felt that he should step in and continue to assist her.
- 19) I asked Mr Lyons if the Respondent had seen the email of 4th July from Mr McHale with the detailed particularisation and he said that it had been sent at 9:09 that morning by email to an employee of the Respondent's solicitors who had never been the solicitor on record. Nonetheless, having had a very brief opportunity to consider the contents of the email, the Respondent's position was that it is very vague, with only one of the alleged comments potentially relating to the Claimant's race.
- 20) Having taken stock of the parties' current positions, I outlined the chronology which I had understood from the papers (and as set out in the preceding paragraphs herein) and both Mr McHale and Mr Lyons agreed that it was accurate as far as each of them was concerned. I then heard

submissions from both representatives in relation to the Respondent's application to strike out the claim, the substance of which will be set out as appropriate below.

The Applicable Legal Framework

21) I discussed the applicable legal framework in respect with the representatives and it did not appear to be in any way controversial. At all times whilst hearing submissions and considering my decision, I kept in mind the Rules and principles set out below.

22) Rule 3 of the Employment Tribunal Rules of Procedure 2024 expresses the Overriding Objective, with which all parties must comply, in the following terms:

3(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes, so far as practicable—

(a) ensuring that the parties are on an equal footing,

(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues,

(c) avoiding unnecessary formality and seeking flexibility in the proceedings,

(d) avoiding delay, so far as compatible with proper consideration of the issues, and

(e) saving expense.

(3) The Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules, or

(b)interprets any rule or practice direction.

(4) The parties and their representatives must—

(a)assist the Tribunal to further the overriding objective, and

(b)co-operate generally with each other and with the Tribunal.

23) The power to strike out a claim, or part of it, is provided for by Rule 38 of the Employment Tribunal Rules of Procedure 2024:

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 advancing it has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

24) A useful and frequently-cited authority in respect of striking-out a claim for the reasons set out in Rule 38 is the decision of His Honour Judge Tayler, sitting in the Employment Appeal Tribunal (EAT), in Smith v Tesco Stores Ltd [2023] EAT 11. At paragraph 36 of his judgment, Judge Taylor noted that:

“it is important to remember that parties are not merely requested to assist the employment tribunal in furthering the overriding objective, they are required to do so.”

25) The fundamental importance of cooperation between the parties and fairness was also noted by HHJ Tayler, at paragraphs 4 and 5:

4. The longer case management goes on, the greater the risk that a litigant in person will become embattled and fail to engage properly with the employment tribunal. Good case management requires that the parties work with the employment tribunal and each other in a constructive manner. Even litigants in person must focus on their core claims and engage in clarifying the issues. It is not the fault of a litigant in person that she or he is not a lawyer, but neither is it the fault of the other party or the employment tribunal. While the employment tribunal should take reasonable steps to assist litigants in person, this must not be at the expense of fairness to the other parties to the claim, and to litigants in other proceedings, who seek a fair determination of their disputes, having regard to the limited resources of the employment tribunal.

5. Regrettably, those who are confused by, or disagree with, proper case management decisions that are fair to both parties, sometimes jump to the conclusion that the employment judge is biased and that the employment tribunal and its staff are adversaries to be

challenged and attacked. If such a mistaken view results in a withdrawal from the required cooperation with the employment tribunal and the other party, necessary to advance the overriding objective, it puts a fair trial at risk.

- 26) HHJ Tayler also gave consideration in Smith v Tesco to when strike out was appropriate, at paragraph 47:

This judgment should not be seen as a green light for routinely striking out cases that are difficult to manage. It is nothing of the sort. We must remember that the ‘tribunals of this country are open to the difficult’. Strike out is the last resort, not a short cut. For a stage to be reached at which it can properly be said that it is no longer possible to achieve a fair hearing, the effort that will have been taken by the tribunal in seeking to bring the matter to trial is likely to have been as much as would have been required, if the parties had cooperated, to undertake the hearing. This case is exceptional because, after conspicuously careful, thoughtful and fair case management, the claimant demonstrated that he was not prepared to cooperate with the respondent and the employment tribunal to achieve a fair trial. He robbed himself of that opportunity.”

- 27) It is therefore clear that the striking-out of a claim (or a response) is a draconian measure and that the Tribunal should, therefore, take great care to consider whether it is appropriate in all the circumstances of the case.

- 28) When considering whether to strike out a claim because of scandalous, unreasonable or vexatious behaviour, the Tribunal must ask itself three questions (as per Mr Justice Burton in Bolch v Chipman [2004] IRLR 140):

- a. Whether there has been scandalous, unreasonable or vexatious conduct of the proceedings;
- b. If so, save in very limited circumstances where there has been wilful, deliberate or contumelious disobedience of an order of the tribunal, whether a fair trial is no longer possible; and

- c. If so, whether strike out would be a proportionate response to the conduct in question.

29) The approach taken in Bolch was approved by the Court of Appeal in Blockbuster Entertainment Ltd v James [2006] IRLR 630, where Lord Justice Sedley stated at paragraph 5:

This power, as the employment tribunal reminded itself, is a draconic power, not to be readily exercised. It comes into being if, as in the judgment of the tribunal had happened here, a party has been conducting its side of the proceedings, unreasonably. 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 are fulfilled, it becomes necessary to consider whether, even so, striking out is a proportionate response.”

30) At paragraph 18, when considering proportionality, Sedley LJ explained:

The first object of any system of justice is to get triable cases tried. There can be no doubt among the allegations made by Mr James are things which, if true, merit concern and adjudication. There can be no doubt, either that Mr James has been difficult, querulous and uncooperative in many respects. Some of this may be attributable to the heavy artillery that has been deployed against him – though I hope that for the future he will be able to show the moderation and respect of others which he displayed in his oral submissions to this court. But the courts and tribunals of this country are open to the difficult as well as to the compliant, so long as they do not conduct their case unreasonably.

31) In Governing Body of St Albans Girls’ School v Neary [2010] IRLR 124 (CA), Smith LJ (with whom Sedley and Ward LJJs agreed) stated, at paragraph 60, that “[i]t is well established that a party guilty of deliberate and persistent failure to comply with a court order should expect no mercy.” It is also well-

established that, where it is necessary to consider the question of whether a fair trial remains possible, there is no requirement to conclude that a fair trial is not possible in absolute terms and the correct question to ask is whether there is a “significant risk” that a fair trial is no longer possible.

- 32) In respect of the question whether there is a “significant risk” that a fair trial is no longer possible, Chadwick LJ said at paragraphs 54 and 55 of the Court of Appeal’s decision in Arrow Nominees v Blackledge [2000] 2 BCLC 167 that:

54. ...where a litigant’s conduct puts the fairness of the trial in jeopardy, where it is such that any judgment in favour of the litigant would have to be regarded as unsafe, or where it amounts to such an abuse of the process of the court as to render further proceedings unsatisfactory and to prevent the court from doing justice, the court is entitled, indeed, I would hold bound, to refuse to allow that litigant to take further part in the proceedings and (where appropriate) to determine the proceedings against him. The reason, as it seems to me, is that it is no part of the court’s function to proceed to trial if to do so would give rise to a substantial risk of injustice. The function of the court is to do justice between the parties; not to allow its process to be used as a means of achieving injustice. A litigant who has demonstrated that he is determined to pursue proceedings with the object of preventing a fair trial has forfeited his right to take part in a trial. His object is inimical to the process which he purports to invoke.

55. Further, in this context, a fair trial is a trial which is conducted without an undue expenditure of time and money and with a proper regard to the demands of other litigants upon the finite resources of the court.

- 33) At paragraph 19 of Emuemukoro v Croma Vigilant (Scotland) Ltd [2022] ICR 327, Choudhury J (President) made a very important point about what constitutes a fair trial, when he explained the following:

I do not accept Mr Kohanzad's proposition that the power can only be triggered where a fair trial is rendered impossible in an absolute sense. That approach would not take account of all the factors that are relevant to a fair trial which the Court of Appeal in Arrow Nominees [2000] 2 BCLC 167 set out. These include, as I have already mentioned, the undue expenditure of time and money; the demands of other litigants; and the finite resources of the court. These are factors which are consistent with taking into account the overriding objective. If Mr Kohanzad's proposition were correct, then these considerations would all be subordinated to the feasibility of conducting a trial whilst the memories of witnesses remain sufficiently intact to deal with the issues. In my judgment, the question of fairness in this context is not confined to that issue alone, albeit that it is an important one to take into account. It would almost always be possible to have a trial of the issues if enough time and resources are thrown at it and if scant regard were paid to the consequences of delay and costs for the other parties. However, it would clearly be inconsistent with the notion of fairness generally, and the overriding objective, if the fairness question had to be considered without regard to such matters.

- 34) In Weir Valves & Controls (UK) Ltd v Armitage [2004] ICR 371, the EAT emphasised the need to approach procedural defaults through a nuanced inquiry into the extent of prejudice and to explore alternative and proportionate remedies to any such default. The Tribunal should focus on maintaining fairness. In doing so, it was explained that:

For justice to be done between the parties to consider all the circumstances, contumelious default, the disruption, the unfairness, the prejudice, whether a fair trial is still possible and whether a lesser remedy would be more appropriate.

- 35) Further guidance is given in Harris v Academies Enterprise Trust [2015] IRLR 208, where it was stated that the Tribunal must:

...consider what has happened, the failure to comply with Orders over the period of time, repeatedly may give rise to a view of indulgence if granted the same would happen again.

The Parties' Submissions

36) The Respondent's position, as summarised by Mr Lyons in his submissions, was effectively that there was a "casualness" in the Claimant's position which needed to be considered as a crucial factor when deciding if the claim should be struck out. He also emphasised the uncontentious point that all parties, whether acting in person, through an unqualified representative or through a qualified representative, must follow the Rules and comply with orders and directions. Furthermore, he argued, the Tribunal must also consider the matter in the context of the expense to the public purse both in terms of the Tribunal's time and because the Respondent is a publicly-funded government department. Mr Lyons also argued that the likelihood of maintaining the final hearing (which is listed in December, only 4½ months away) is extremely low given that there has not even yet been an amended response to the claim in the absence of the information the Claimant was ordered to provide by 19th November 2024 and was only finally sent to the Respondent less than an hour before the start of this hearing. Against the background of multiple warnings to the Claimant and multiple attempts to chase by the Respondent, together with no cogent explanation for the significant delays, Mr Lyons argued, there can be little faith that the Claimant would comply with what would have to be an extremely tight timetable to prepare the matter properly for a final hearing in December.

37) In response, on behalf of the Claimant, Mr McHale urged me not to hold the Claimant responsible for his errors, commenting that "the buck stops with me". Mr McHale made a "firm assertion" that he would, if the claim is permitted to continue "strictly abide by everything" and put forward one email address which he will monitor properly and will ensure he is able to access as required.

Analysis and Conclusion

- 38) Before delivering my oral decision, I sought to emphasise three points which appeared to be relevant.
- 39) First, I emphasised that I must deal with this matter on the basis of what the binding authorities make clear, namely that a litigant in person is expected to comply with the Rules and directions in the same way as a represented party, otherwise the system simply will not function (although, of course, some latitude can be given if there are clearly issues which can be resolved with a little effort and management). This must be all the more the case where, as here, the Claimant has a representative acting on her behalf, albeit one who is not legally qualified but has acted as a union representative, and whom the Claimant has been willing to instruct to act on her behalf throughout the claim and has listed him as her representative in her claim form. I also kept in mind that it is ultimately the Claimant's responsibility to ensure that her case is pursued appropriately, whether that be by her own hand or by instructing a representative behind whom she is content to stand.
- 40) Second (and I emphasised this point because, during the course of the hearing, the Claimant herself suggested that I did not understand the nature of some racism when we were discussing how the claim is being framed), I explained that I am well aware, and remind myself constantly, that race discrimination is not always obvious and that it would indeed be wrong to assume that, just because there has not been what some might call "openly-expressed" racism, race is not a factor in any scenario such that discrimination has occurred. I explained to the Claimant that I understood, and did not in any way doubt what she told me, about having experienced racism throughout her life. Having said that, I noted that it still cannot be enough for a claimant to succeed for a claimant to say that they felt that race was a factor and that this is why we have to apply the clear legal principles to the factual findings in any given case, which is how I would look at this case as I do with any other.
- 41) Third, I observed that it would be fair to say that I did not hold back during the course of the hearing in criticising (although I hope fairly and in a non-

offensive manner) Mr McHale's conduct on behalf of the Claimant; I did not mean that to be seen in any way as a personal attack as I do not know Mr McHale and I have no reason to wish to criticise him if there is no basis for it. The point here was that there is no factual dispute about what had happened and that he was acting on behalf of the Claimant such that his acts and omissions are rightly attributed to the Claimant. Unfortunately, progress of the claim was impeded significantly solely by the way in which it had been dealt with on the Claimant's behalf. I had indicated that I did not need to hear detailed information about email problems and the assault that Mr McHale said he had experienced because I had read the documentation and, whilst I would of course take all the circumstances into account, this hearing was not about Mr McHale and was about the Claimant's conduct of the case, either on her own or through him. I also noted that the alleged assault happened after the original deadline for compliance with the order for further and better particulars, which was now about 8 months ago and had technically only been complied with that morning. Regrettably, I found that the manner in which emails had not been checked properly by simply looking in the junk folder when important correspondence is expected, and the fact that crucial documents had not been copied to the Respondent (which the Rules specifically require because the Tribunal is not a mail-forwarding service) on the basis that the Tribunal will send them on (which Mr McHale had suggested by way of explanation of his omissions during the hearing), is unacceptable and cannot be excused in these circumstances.

- 42) The factual background and the applicable legal principles are set out above and will not be repeated here.
- 43) I did not find the Claimant's conduct of the claim to be scandalous or vexatious as it had not been, in my view, either intentional or calculated to interfere with the proper progress of the claim. However, given the multiple failures to engage with the proceedings, despite warnings from the Tribunal and regular chasing correspondence from the Respondent's representatives as set out above, I did find the conduct of the claim to have been palpably unreasonable and, indeed, sufficiently unreasonable

for striking-out to be considered as a proportionate response in all the circumstances.

44) I then turned to the question of whether a fair hearing could take place. I was not willing to postpone the final hearing listed to take place in December 2025 solely as a result of the Claimant's unreasonable conduct as this would simply serve to reward or encourage the poor conduct of litigation. As such, I asked myself if a fair hearing could take place in December as matters currently stood. We did not yet even have a list of issues; in the 4½ months between this hearing and the final hearing, there would need to be an agreed list of issues, exchange of documents and the exchange of witness statements. I did not doubt Mr McHale's sincerity when he told me that he intended to comply with all directions made but, given the past performance and the abject lack of any cogent explanation for any of the lengthy delays I identified, regrettably I was simply unable to accept that as being the answer. Past performance is the best indication of future performance in this context and I had to take that into account when deciding that there was a real risk of the Claimant not complying with what would have to be an extremely tight timetable. Furthermore, and perhaps more fundamentally, I considered that it would be unfair to the Respondent, who had gone to great lengths to try and prevent the proceedings from being derailed, to have to go through these stages of the procedural process in such a short period in order to be able to defend the claim brought against them.

45) Keeping in mind that striking out a claim is the most draconian outcome possible, I asked myself if any other approach could resolve the issue (and, therefore, whether it was a proportionate response in all the circumstances). In my view, the answer to that question was that no other response would suffice. The multiple strike-out warnings already made were insufficient to prompt compliance so it was, in my view, very unlikely that unless orders would have any cogent impact; more importantly, this would not avoid the problem of requiring the Respondent to prepare their own case in such a short period, which, as noted above, I considered to be inimical to a fair hearing. The making of deposit orders would also be unlikely to achieve any different outcome because their purpose is to filter

out claims with poor prospects and these proceedings had already reached a stage far beyond the point where the making of such an order could have any real impact.

- 46) When delivering my oral decision at the conclusion of the hearing, I did say that I had considered the prospects of success to be a relevant factor. However, for the sake of clarity, upon reflection I considered that, although I did hear submissions in that regard, it was not necessary to make findings as to that aspect of the case. For the avoidance of doubt, having reviewed the overall circumstances as set out above, I considered that the Claimant's conduct of the claim alone was sufficient to warrant its striking-out. To the extent that the merits of the claim were a part of my consideration, they only entered into the question of whether striking-out was a proportionate response and, even then, played a very small part in my reviewed consideration of the matter as a whole.
- 47) For the reasons set out above, I found that it was in accordance with the Overriding Objective for me to exercise my discretion to strike out the Claimant's claim in its entirety.

Employment Judge Cline

Date: 7th September 2025

REASONS SENT TO THE PARTIES ON

16 October 2025

FOR THE TRIBUNAL OFFICE