EMPLOYMENT TRIBUNALS

Claimant: Mr H Smith Langridge
Respondent: Fusion Consulting Group Limited

Heard at: Watford Employment Tribunal
On: 22 October 2025
Before: Employment Judge Taft

Representation
Claimant: Did not attend nor represented
Respondent: Ms Moizer (Counsel)

JUDGMENT

1. The respondent's application for strike out is refused.

2. The respondent's application for costs is granted. The claimant is ordered to pay the respondent's costs of this hearing, assessed at £1320.

REASONS

Introduction

1. Written reasons for the judgment on strike out were requested by the respondent at the hearing. Given that request, reasons are given for the costs order that accompanies that judgment. Explanation is further provided below as to why the hearing proceeded on 22 October, an application to postpone having been refused but the claimant having failed to attend.

Law and procedural rules

2. Rule 32 of the Employment Tribunal Rules 2024 deals with postponement.

> (1) An application by a party for a postponement must be received by the Tribunal as soon as possible after the need for a postponement becomes known.

(2) In the circumstances listed in paragraph (3) the Tribunal may only order a postponement where—

(a) all other parties consent, and—

(i) it is practicable and appropriate for the purposes of giving the parties the opportunity to resolve their disputes by agreement, or

(ii) it is otherwise in accordance with the overriding objective,

(b) the application was necessitated by an act or omission of another party or the Tribunal, or

(c) there are exceptional circumstances.

(3) The circumstances are—

(a) a party makes an application for a postponement less than 7 days before the date on which the hearing begins, or

(b) the Tribunal has ordered two or more postponements in the same proceedings on the application of the same party and that party makes an application for a further postponement.

(4) In this rule—

(a) "postponement" means a postponement of a hearing including any adjournment which causes the hearing to be held or continued at a later date;

(b) "exceptional circumstances" may include ill health relating to an existing long term health condition or disability.

3. Rule 38 confirms that

(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).

4. Rule 42 confirms that

The Tribunal may consider any written representations from a party, including a party who does not propose to attend the hearing, if they are sent to the Tribunal and the other parties, and must do so if they are sent to the Tribunal and the other parties not less than 7 days before the hearing.

5. Rule 47 confirms that

If a party fails to attend or to be represented at a hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it must consider any

information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.

6. Rule 74 deals with costs

(1) The Tribunal may make a costs order or a preparation time order (as appropriate) on its own initiative or on the application of a party or, in respect of a costs order under rule 73(1)(b), a witness who has attended or has been ordered to attend to give oral evidence at a hearing.

(2) The Tribunal must consider making a costs order or a preparation time order where it considers that—

(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings, or part of it, or the way that the proceedings, or part of it, have been conducted,

(b) any claim, response or reply had no reasonable prospect of success, or

(c) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which that hearing begins.

(3) The Tribunal may also make a costs order or a preparation time order (as appropriate) on the application of a party where a party has been in breach of any order, rule or practice direction or where a hearing has been postponed or adjourned.

7. There is a great deal of case law about strike out under Rule 38(1)(c). I will run through some of it.

8. In Blockbuster v James [2006] EWCA Civ 684, the Court of Appeal confirmed that strike out is a draconian power not to be readily exercised. It should only be exercised where there is unreasonable conduct in terms of deliberate and persistent disregard of required procedural steps or a fair trial is no longer possible. Strike out must be proportionate and I must consider Article 6. I must consider whether there is a less drastic solution to the conduct complained of.

9. In Weir Valves v Armitage [2003] 10 WLUK 385, the Employment Appeal Tribunal confirmed that there are five things to consider:

- 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 would still be possible, and
- Whether strike out or some lesser remedy would be an appropriate response.

10. Weir was a case in which the appellant had failed to exchange statements, reviewed the respondent's statements, read them and then later served their own statements. It was said that strike out was too draconian in that case because there was a less drastic option of excluding any part of the statement that was said to be unfair by reason of the appellant already having seen the respondent's

statement. The Employment Appeal Tribunal was not convinced that there was any significant prejudice to the respondent by the appellant's behaviour and by the appellant having read the respondent's statements before preparing their own.

11. In Ridsdill and ors v Smith & Nephew Medical [2006] 7 WLUK 459, the Employment Appeal Tribunal overturned the decision of an Employment Tribunal made at a final hearing to strike out a claim for failure to provide schedules of loss or a witness statement on the basis that it was not proportionate because there was a less drastic option of adjournment and an unless order with a costs penalty to address the prejudice to the respondent.

12. In Bharaj v Santander [2023] EAT 152, the Employment Appeal Tribunal upheld the decision of an Employment Tribunal to strike out a claim where a claimant was initially refusing to exchange statements pending a request for further disclosure. The statements were eventually exchanged after an unless order but some time after the deadline for compliance with that order. Exchange was said to be too late to make a fair trial possible and, this being some time after the events in question, a postponement would affect fairness given the effect on memories. In that case, there had been several postponements of the hearing and a considerable delay had elapsed since the events that led to the claim.

Chronology leading to these applications

13. This claim was issued on 29 January 2025.

14. On 28 March, the respondent sent an email to the tribunal setting out their view as to listing and providing dates to avoid. The respondent suggested that there should be a two-day hearing, which is the usual length of hearing for a claim of constructive dismissal such as this.

15. On 15 April, the claimant's representative also wrote to the tribunal, copying in the respondent. In that letter the claimant's representative suggested that because the respondent was likely to call three to four witnesses and in addition the claimant would wish to call three to four witnesses, he considered that the estimate of two days should be increased to three days.

16. However, on 19 June 2025, the tribunal sent out a notice of final hearing being for a two-day hearing starting on 22 October at the Watford Employment Tribunal. The notice of hearing also enclosed case management orders including notably in respect of disclosure, agreeing the bundle, and exchange of witness statements. So it should have been obvious to the claimant's representative by June 2025 that whilst he had expressed a view that the case should be listed for three days, it had in fact been listed for two days, and that it would begin on 22 October. It is notable that this listing was provided taking account of both parties' dates to avoid.

17. Disclosure took place in line with that order on 29 July, and the bundle was agreed, again in line with the order, on 19 August.

18. On 20 August, the claimant's representative sent an email to the respondent's

representative. In that email, he confirmed that he anticipated being ready to exchange statements on 9 September but he suggested that the respondent's disclosure was deficient. On a date between 20 August and 1 September, the respondent's representative replied confirming that the respondent had complied with their duty of disclosure.

19. On 1 September, the respondent emailed the claimant again. That email deals with a number of matters including adding a further document to the bundle and confirming that an updated version will be sent, that the respondent appeared to be on track for witness statement exchange on 9th and making arrangements as to how that would be done by way of password protected documents, the password being provided on receipt of the claimant's statements. The email suggested that once witness statements had been exchanged, the parties should consider whether the two days allocated were sufficient.

20. On 9 September, the respondent sent the claimant's representative copies of their statements, password protected, as they had indicated in that email of 1 September that they would do. There was no response. There had not been any communication from the claimant's representative by this time since 20 August.

21. The respondent chased the claimant for his statement(s) on 12 September.

22. The respondent's representative was then away on holiday and returned on 29 September, when he chased again, warning that the respondent would apply for strike out if there was no response.

23. Again, there having been no response, the respondent made an application for strike out on 6 October. The email to the tribunal indicates that it is copied to the very same email address used throughout by the claimant's representative and, indeed, that had been used as recently as the morning of the hearing by the claimant's representative.

24. On 15 October, the respondent uploaded the bundle and statements to the document upload centre as ordered, and on the same date sent un-password protected copies to the claimant's representative. The claimant's representative therefore now has copies of the statements.

25. On 17 October, Employment Judge Quill asked the tribunal staff to write to the claimant's representative. The letter pointed out that the claimant had not responded to the respondent's application and that it was proposed that the application be granted and the claim be struck out, but giving the claimant's representative a final opportunity to write to the tribunal and the respondent by 5pm Friday 17 October, to state if it still represents the claimant and whether it is charging the claimant for its services. It was said that unless there was a reply by that time, the respondent had permission to write to the claimant directly and the tribunal might do so. The letter went on to inform the claimant's representative that if the claimant disputed any of the factual accuracy of the respondent's representative's letter it should say so and if it had any grounds for objecting to strike out it should say so.

26. The claimant's representative then sent a holding response: a very short letter to

the tribunal explaining that they would not be able to respond before the 5pm deadline but would "absolutely" respond properly prior to the start of business on Monday 20 October, although likely that evening after business hours. He did not.

27. He wrote a letter on 21 October, which was one day before the hearing. That letter attached a letter purportedly sent to the employment tribunal and the respondent on 2 September. Neither received that letter. The letter sought a postponement of the hearing, an order for specific disclosure and a new date to exchange witness statements. It was said that the claimant cannot prepare a statement without this further disclosure.

28. In the letter of 21 October, the claimant's representative said that he had been unwell and had been unable to engage with the respondent or employment tribunal. He did not provide any medical evidence. The letter is very unclear as to exactly when the claimant's representative says he was ill and when he was hospitalised.

29. The claimant's representative claimed not to have received the strike out application on 6 October. The letter concluded by saying that the claimant's representative did not expect the hearing to proceed given his letter of 2 September and although he had received the respondent's emails throughout September, he expected the issue of statements would also be resolved by the employment tribunal determining the applications in that letter of 2 September.

30. That letter was put before Judge Alliott who, having been raised so close before the hearing, sensibly indicated that it was an application that needed to be dealt with at the hearing.

31. The claimant's representative then emailed the tribunal to say that he could not attend the hearing because he was in Marrakesh. It is not clear how that is consistent with what he said in the letter of 21 October about hospitalisation. The claimant's representative also said that the claimant was unable to attend the hearing because he was also away from the country in an unspecified foreign country. He attached a "position statement", asserting that the letter of 2 September was sent to the tribunal and that the respondent's application of 6 October was not received.

Application to postpone

32. I treated the letter of 21 October as an application to postpone because it included the letter purportedly sent on 2 September making an application to postpone.

33. No email purporting to send the 2 September letter has been produced. It is very odd indeed that neither the employment tribunal nor the respondent received it if, indeed, it was sent as it is alleged. It is further odd that this request for specific disclosure was made only on 2 September, after the bundle had been agreed, and some five weeks after disclosure was received. Whilst there was correspondence regarding disclosure in late August, this appears to have been dealt with by the respondent's representative before 1 September because on 1

September a further email is sent. That is, of course, a day before the claimant purportedly made his application on 2 September so the claimant's representative should have received these emails.

34. Certainly, the 2 September letter was never received by the tribunal. I do not have any evidence that it was sent. Therefore, I treat that application as having been made on 21 October. I am not therefore satisfied that that this application was made as soon as possible after the need for postponement became known.

35. The application was made less than 7 days before the hearing. I am not satisfied that any of the circumstances in Rule 32(2) are relevant in this case: the respondent does not consent, the application was not necessitated by any act or omission of the respondent or tribunal and there are no exceptional circumstances. The alleged ill health was not sufficiently particularised and not supported by evidence, as required by the Presidential Guidance. I therefore refused the application to postpone.

Proceeding in claimant's absence/written representations

36. Rule 47 confirms that I may either dismiss the claim or proceed in the absence of the party after considering the reasons for the party's absence. The reason for the party's absence appears to be that the claimant's representative made an assumption that an application purportedly sent to the tribunal in September, but never received by the tribunal, would mean that the hearing would not go ahead. On the basis of that assumption, both the representative and the claimant are out of the country and this is, of course, an in-person hearing. That is a very strange position to take. Absent an order from the tribunal, all parties must expect that listed hearings will proceed as listed.

37. The other circumstance is that the respondent has made an application for strike out. I decided to proceed in the claimant's absence so that application could be heard.

38. That then brings us on to the written representations, including the "position statement" produced by the claimant's representative. Under Rule 42 I may consider written representations from the parties, including a party who has not proposed to attend the hearing, if they are sent to the tribunal and the other parties. I checked with the respondent's counsel that she had received the written representations that were made by the claimant's representative both on 21 and 22 October and she confirmed that she had. I therefore proceeded on the basis that I would consider those representations and I have done so.

Strike out

39. The claimant says that he did not receive the respondent's application of 6 October. That is odd because the tribunal has a copy that shows it was copied to the same email address the claimant's representative has used to communicate with the respondent and tribunal throughout, and in the days immediately preceding this hearing.

40. The respondent did not suggest that the claim was scandalous, vexatious or had

no prospect of success, nor with any real force that the manner in which proceedings had been conducted was scandalous, unreasonable or vexatious. The focus of the application was on limbs (c), (d) and (e) of Rule 38(1).

41. It is clear that there was non-compliance with the order of the tribunal to exchange statements on 9 September. I am not satisfied that the claim has not been actively pursued. It was clearly not actively pursued throughout September or October but I am not satisfied that it was not actively pursued before that. A failure to actively pursue a claim for a matter of a couple of months, when that may be explained by the illness of the representative, cannot be said to be reason to strike it out.

42. We do not have the first limb of Blockbuster. There has been a failure to exchange witness statements but other procedural steps were completed by the claimant. This is not deliberate and persistent. It is only from late August that the claimant's representative stopped engaging with the respondent and tribunal, and that has been at least partially explained by the alleged illness.

43. I therefore must consider whether or not a fair trial is possible. It is clear from the case law that I should not just look at whether a fair trial is possible today but whether a fair trial is possible if I were to take the less draconian action of adjourning the matter and making an unless order.

44. Looking through the matters identified in Weir:

- the magnitude of a non-compliance

This is clearly very significant. Failing to exchange witness statements is just about as significant as it can get.

- Whether the default was responsibility of the party or his or her representative

That is not clear in this case. It is the representative that is suggesting that statements can only be exchanged after further disclosure is received but that may of course be on instructions from his client.

- What disruption, unfairness or prejudice is being caused?

Clearly, today's hearing cannot take place and, if it cannot take place, that is considerably disruptive both to the tribunal and to the respondent.

- Whether or not a fair hearing would still be possible.

The respondent suggested that a fair trial is not possible because the claimant now has the respondent's statement. But of course in Weir, the Employment Appeal Tribunal suggests that that could be dealt with by excluding any part of the claimant's statement that is said to be unfair. We do not have the claimant's statement yet. But, if the claimant were to include anything that would make the matter unfair, that is a course of action open to a tribunal on application from the respondent.

This is not a case where there would be considerable delay as in Bharaj v Santander. This claim was issued on 29 January 2025, only four days after employment was terminated. I checked the likely listing of a three-to-four-day hearing - that would be in late 2026 or early 2027. That may sound like a significant delay, and it is, but it is no more significant than many parties face with longer hearings at this particular tribunal centre.

- Is striking out proportionate or would some lesser remedy be an appropriate response?

That lesser remedy would be an adjournment and unless order and I have no doubt if I were to do that an application for costs would result from the respondent.

45. So, although I have extremely serious concerns about the actions of the claimant's representative, particularly in the days preceding the hearing, I am conscious that the case law is clear that I must only strike out where there is no fair trial possible not only today but in the future and I am not satisfied that is the case. An adjournment and unless order is the more proportionate approach to the non-compliance with the order to exchange statements. Any prejudice to the respondent caused by the claimant having seen its statements can be ameliorated by an application to exclude any parts of the statement(s) said to be unfair.

Costs

46. The respondent made an application for the costs wasted by the need to adjourn the hearing, in the sum of its Counsel's brief fee for the hearing. That was of course for a 2-day final hearing.

47. From the chronology of events above, it is clear that the claimant's representative has acted disruptively and unreasonably in the way that proceedings have been conducted. His failure to engage substantively with either the tribunal or the respondent from 20 August to 21 October cannot reasonably be explained. It cannot be explained by his illness without medical evidence and further detail. Why the claimant's representative thought it appropriate to leave the country and to advise his client that it was appropriate to leave the country when there was a hearing listed cannot be explained. Why he was not in a position to identify that fact in his short letter to the tribunal on 17 October cannot be explained. Why he was not able to identify that fact in his letter to the tribunal on 21 October and only did so on the morning of the hearing cannot be explained. Why that letter was sent only on 21 October, and not after close of business on Friday 17 October or over the weekend as was promised, cannot be explained.

48. I am satisfied that Rule 74(2)(a) is made out. I must therefore consider making a costs order. I am satisfied that it is an appropriate order in these circumstances and that the sum claimed by the respondent - £1320 – is reasonably incurred and proportionate.

Approved by:

Employment Judge Taft

14 November 2025

JUDGMENT SENT TO THE PARTIES ON
18 November 2025
.....

.....
FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/