



EMPLOYMENT TRIBUNALS

Claimant: Peter Nicholson

Respondent: Supreme CBD Ltd

Heard at: Manchester (by CVP) **On:** 7 October 2025

Before: Employment Judge Dennehy

Representation

Claimant: no attendance

Respondent: Mr James Magill (solicitor)

PUBLIC PRELIMINARY HEARING JUDGMENT

The claimant's claim is struck out under Rule 38(1) (c) (d) and (e) on the basis of non-compliance with orders of the Tribunal, that it has not been actively pursued and it is no longer possible for a fair hearing to take place.

REASONS

1. This case was listed today for a one day preliminary hearing in public to consider the issues as set out on the Case Management Order dated 14 March 2025, in summary these were to determine the employee/worker status of the claimant, whether the claims of harassment related to age be struck out because the claimant has no reasonable prospect of establishing there was discriminatory conduct, consider any application by the respondent for strike out and deal with any further case management orders as necessary.
2. On 7 August 2025 Judge Bulter wrote to the parties on to warn them that one of the issues that may be considered at the hearing today is whether the claim should be struck out on the grounds of non-compliance with the Tribunal orders. I agree with Judge Butler.
3. The Claimant did not attend today. The tribunal clerk attempted to contact the claimant by email and telephone and the claimant's representative Paul

Greenwood but there was no response. Mr Magill told me that he had written to the claimant on various occasions via emails and that they had been read and received by the claimant.

4. The last email to the Tribunal was an email from the claimant's representative Mr Greenwood on 21 July 2025 requesting an extension as the claimant was in jail for a motoring offence, however no further detail was provided or contact from Mr Greenwood or the claimant despite repeated requests.
5. The respondent was represented by Mr Magill and two witness, namely Ms Lennon, Chief Operating Officer for the respondent and Mr Fowler, Managing Director for the respondent. Both witnesses answered my questions. The respondent had prepared a bundle of documents 51 pages and Mr Magill provided helpfully written submissions.
6. The claimant presented a claim on 31 July 2024 alleging that he was either employed by, or worked for, the respondent from 12 February 2024 until 3 June 2024 and complains of harassment related to his age, as well unlawful deduction of wages in terms of non-payment of his final wage and commission, failure to pay notice pay, and failure to provide a written statement of particulars.
7. The respondent filed an ET3 and grounds of resistance denying all of the claims. The respondent avers that the claimant knew that at all material times he was not an employee or worker and therefore was not entitled to notice pay. The respondent denies that the claimant was entitled to any commission as the sales he relies upon for the same did not convert. They further assert that, as the last act complained of in terms of harassment that the claimant can identify occurred on 17 March 2024, the claims are out of time (having been presented on 31 July 2024) and/or have no reasonable prospect of success.
8. A case management hearing was listed for 28 January 2025 and the claimant was represented by a solicitor until the 27 January 2025. This hearing was adjourned and did not take place until 14 March 2025.
9. At the 14 March 2025 preliminary hearing the claimant appeared in person and case management orders were given by Employment Judge Rawlinson and sent to the parties on 28 April 2025 ("**Order**").
10. On 21 July 2025 Mr Greenwood emailed the Tribunal to advise that the claimant was in prison for three months for a motoring offence. The Tribunal replied asking for further information and evidence but none was forthcoming. There has been no contact from Mr Greenwood or the claimant since.

The Law

11. Rules 38 of the 2024 Employment Tribunal Rules states:

38 Striking out

- (1) At any stage of the proceedings, either on its own

initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response 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 or response (or the part to be struck out).
- (2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.
- (3) Where a response is struck out, the effect shall be as if no response had been presented, as set out in rule 22 above.

12. The EAT held that the striking out process requires a **two-stage test** in **HM Prison Service v Dolby [2003] IRLR 694**, and in **Hassan v Tesco Stores Ltd UKEAT/0098/16**. The first stage involves a finding that one of the specified grounds for striking out has been established; and, if it has, the second stage requires the tribunal to decide as a matter of discretion whether to strike out the claim. In Hassan Lady Wise stated that the second stage is important as it is a fundamental cross check to avoid the ending prematurely of a claim that may yet have merit.
13. Strike out is a draconian sanction and not one that should be applied lightly. Tribunals should be particularly cautious about exercising their power to strike out badly pleaded claims brought by litigants in person who are not familiar with articulating complex arguments in written form on the ground that they have no reasonable prospect of success (**Mbuisa v Cygnet Healthcare Ltd EAT 0119/18**).
14. It will generally not be appropriate to strike out a claim where the central facts necessary to prove the case are in dispute. It is not the function of a tribunal in such an application to conduct a mini trial. The proper approach is to take the Claimant's case at its highest as it appears from their ET1 unless there are exceptional circumstances (**North Glamorgan NHS Trust v Ezsias [2007] IRLR 603**).
15. The Employment Appeal Tribunal, in **Abertawe Bro Morgannwg University Health Board v Ferguson [2013] ICR 1108** commented that whilst in some cases strike out may save time, expense and anxiety, in

cases that are fact sensitive, the circumstances in which a claim is likely to be struck out are rare.

16. In **Cox v Adecco and ors [2021] ICR 1307** the Employment Appeal Tribunal gave guidance to Tribunals dealing with strike-out applications against litigants in person. It held that when considering strike out of claims brought against litigants in person, the claimant's case should be taken at its highest and the Tribunal must consider, in reasonable detail, what the claims and issues are. A Tribunal should not strike out a claim where it does not know what the claim is. There should, therefore, be a reasonable attempt at identifying the claim and the issues before considering strike out. The EAT also said that, if the claim would have reasonable prospects of success had it been properly pleaded, consideration should be given to the possibility of an amendment, subject to the usual tests that apply to amendments.

Conclusions

17. The claimant has not complied with any of the case management orders as set out in the Order, there has been no disclosure made to the respondent and no exchange of witness statement.
18. I have taken into account that the claimant is a litigant in person, although initially he had a solicitor representing him. From the correspondence I have seen from the claimant, it does not indicate that he was not capable of understanding what was required under the Order. The list of issues agreed at the case management hearing in March 2025 clearly set out what the claimant's complaints were.
19. I am reminded of the draconian nature of the strike out power; the importance of taking into account the overriding objective dealing with cases "fairly and justly" as set out in the Tribunal Rules . This includes amongst other things ensuring so far as practicable that the parties are on an equal footing, dealing with cases in ways that are proportionate to their complexity and importance and avoiding delay. I must consider whether a fair trial is possible; and if not possible, whether any alternative to strike out is proportionate.
20. The claimant attended the preliminary hearing in March 2025 at which the issues were identified. The last item of correspondence from the claimant is 21 July 2025, which is one year from the claimant lodging his claim. I am satisfied that the claimant was sufficiently able to understand the litigation and the requirements upon him and that the respondent has periodically reminded him of his responsibilities without response.
21. The claimant has failed to comply with the Order; he has repeatedly disregarded several procedural steps. I find that the failure to engage with either the respondent or the Tribunal for some time amounts to an intentional failure on the part of the claimant and that it indicates that the claimant is not actively pursuing this litigation that he commenced. The case is not ready to be heard and without engagement from the claimant it cannot be heard.
22. By contrast, the respondent has complied with the Order and provided its

witness statements and prepared the bundle to the claimant and Tribunal. I find that the respondent has been seriously prejudiced by the lack of disclosure by the claimant and that a fair hearing is no longer possible. Because of this I do not find that a lesser sanction is appropriate.

23. In relation to the claim not been actively pursued I considered the questions in **Birkett v James [1987] AC 297** (i) Has there been delay that is intentional or contumelious (disrespectful or abusive to the court); or (ii) Has there been inordinate and inexcusable delay which gives rise to a substantial risk that a fair hearing is impossible or which is likely to cause serious prejudice to the respondent.
24. There has been a wholesale failure by the Claimant to progress his claim either by himself or his representatives. There has been no contact from the claimant or any representative since July 2025.
25. Considering all of the above, I find that the grounds are met for strike out under the Employment Tribunal Rules 38 (1) (c) (d) and (e) and having done so, I must now, in exercising my discretion to strike out, consider whether it is proportionate to strike out the claimant's claim. The case cannot proceed without further engagement by the claimant in his own claim. The respondent has been prejudiced by the lack of disclosure and progress due to the claimant's failure to comply with directions and failure to progress this litigation. Given that the claimant has been aware for a considerable time of the potential for a strike out, there is nothing on which the tribunal can base any confidence that the claimant will comply with the Order and engage with the litigation in the future.. I also take into account the impact on other tribunal users and the proportionate use of tribunal resources and that the respondent is entitled to finality.
26. In conclusion and having regard to the terms of the overriding objective I am satisfied that it is appropriate for me to exercising my discretion to strike out the claim on the basis of a failure to comply with the Order, failure to actively pursuing the claim and that a fair trial is no longer possible.

Costs

27. The respondent made a costs application and is relying on the successful strike out application and the claimant's unreasonable conduct. The respondent is seeking its costs totalling £1,000.00 excluding vat, the costs incurred for preparation of both preliminary hearings. I propose that this is dealt with by brief case management order to the parties.

Counterclaim

28. The counterclaim case number 6016735/2014 is continuing.

Employment Judge Dennehy

7 October 2025

JUDGMENT SENT TO THE PARTIES
ON 24 November 2025

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FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

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/