Case Number: 2304017/2023

EMPLOYMENT TRIBUNALS

Claimant: Mr D Heath

Respondent: NHS England

Heard at: London South Employment Tribunal (in public via CVP)
On: 9 October 2025

Before: **Employment Judge T Perry**

Appearances
For the claimant: In person
For the respondent: Mr D Bayne (Counsel)

RESERVED JUDGMENT

The Respondent's application to strike out the Claimant's claims is dismissed.

REASONS

1. The application before the Tribunal is the Respondent's request to strike out the entirety of the Claimant's claim under rule 38 on the following basis:

   b) that the manner in which the proceedings have been conducted by or on behalf of the Claimant … has been scandalous, unreasonable or vexatious;
   c) for non-compliance with … an order of the Tribunal; and
   e) that the Tribunal consider that it is no longer possible to have a fair hearing in respect of the claim.
   Or alternatively to strike out those parts of the Claimant's claims that have no reasonable prospects of success, specifically those claims which the Tribunal has no jurisdiction to consider including claims against third parties such as the Employment Tribunal.
2. I have before me a bundle of 1059 pages from the Respondent. I have before me from the Claimant the following documents provided in advance of and after the hearing:
   a. Claimant's comments on Bevan Brittan's letter of 17 July 2025;
   b. Claimant's comments on Bevan Brittan's letter of 22 August 2025;

c. Claimant's objection to strike out application submitted 1 October 2025;
d. Claimant's draft list of issues v4 and summary v4;
e. Comparison table NHSE vs v13;
f. Claimant's emails dated 9 October 2025, 30 October 2025 (07:05), (07:09), (07:12), 31 October 2025 (16:51) plus attachments. Notable amongst which are v5 of the Claimant's list of issues and Claimant's objection to strike out dated 30 October 2025.

3. I heard oral submissions from Mr Bayne and the Claimant. Mr Bayne took me through the chronology of the case by reference to the Respondent's bundle. As this took a considerable time, and given the Claimant was complaining of a headache and to allow him more time to marshal his thoughts, the Claimant was given the opportunity to provide further submissions in writing. The Claimant took up this opportunity.

The Law

4. The power to strike out is contained in rule 38, the relevant sections of which have been set out above. It is a draconian power not used to punish a party.
5. Unreasonable conduct has its normal meaning. For a tribunal to strike out for unreasonable conduct, it must be satisfied either that the conduct involved deliberate and persistent disregard of required procedural steps or has made a fair trial impossible; and in either case, the striking out must be a proportionate response (**Blockbuster Entertainment Ltd v James** 2006 IRLR 630, CA).
6. Scandalous means conduct that is irrelevant and abusive to the other side rather than 'shocking' (**Bennett v Southwark London Borough Council** [2002] ICR 881, CA).
7. In **Attorney General v Barker** [2000] 1 FLR 759, QBD (Div Ct), Lord Chief Justice Bingham described 'vexatious' as a 'familiar term in legal parlance'. He said that the hallmark of a vexatious proceeding is that it has 'little or no basis in law (or at least no discernible basis); that whatever the intention of the proceeding may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process'.
8. In considering whether a claim should be struck out on the grounds of scandalous, unreasonable or vexatious conduct, a tribunal must consider whether a fair trial is still possible (**De Keyser Ltd v Wilson** [2001] IRLR 324, EAT).
9. In deciding whether to strike out a party's case for non-compliance with an order under rule 38(1)(c), a tribunal will have regard to the overriding objective set out in rule 3 of seeking to deal with cases fairly and justly and the factors set out in **Weir Valves and Controls (UK) Ltd v Armitage** [2004] ICR 371, EAT

10. The EAT set out the steps that a tribunal must ordinarily take when determining whether to make a strike-out order in **Bolch v Chipman** [2004] IRLR 140, EAT.
11. In **Emuemukoro v Croma Vigilant (Scotland) Ltd** [2022] ICR 327, EAT, the EAT rejected the proposition that the question of whether a fair trial is possible must be determined by considering whether a fair trial is possible at all. Rather, where an application is made at the outset of a trial, the question is whether a fair trial is possible within the allocated trial window.
12. In **Smith v Tesco Stores Ltd** 2023 EAT 11 HHJ Tayler sounded a note of caution about drawing the conclusion that a fair hearing is no longer possible, commenting: 'Strike out is a 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 [was] 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.'

Chronology

13. The Claim has a lengthy procedural history, not all of which needs to be repeated here. However, it is important to repeat the basics.
14. The claim was originally submitted on 1 August 2023. It contained a relatively concise particulars of claim specifically referencing two instances of whistleblowing from 2013 and 2015. At the end it attached a list of grievances submitted by the Claimant in 2021 and 2023.
15. On 21 November 2023 in correspondence with the Tribunal the Claimant described the conduct of two members of the Respondent's staff in not sending him an excel spreadsheet as "vile. Alternatively maybe their conduct is better covered "The offence of encouraging or assisting suicide carries a maximum penalty of 14 years' imprisonment"." The suggestion from the Claimant is that staff were "trying to push [him] over the edge."
16. In a letter on 28 March 2024 responding to a request for further particulars, the Claimant mentioned three further protected disclosures from 2023 in a list of 5 disclosures.
17. At a Preliminary hearing on 30 September 2024 EJ L Ord ordered the listing of a 10 day full merits hearing. The summary of the claims and issues records that the Tribunal has no jurisdiction to consider many of the Claimant's claims and that the Claimant said he had about 100 further disclosures in all. The chronology of the case was discussed up to 20 January 2022. The hearing went part heard.
18. There was a further Preliminary hearing before EJ L Ord on 8 November 2024. The chronology of the claim through to 13 April 2023 was discussed and recorded. The Respondent was ordered to prepare a draft list of issues

ahead of a further Preliminary Hearing on 18 March 2025. The Respondent produced a draft list of issues as ordered.

19. By 14 March 2025, after a series of earlier letters, Regional Employment Judge Khalil wrote to the parties to confirm that the Claimant's emails would not be answered unless they related to a specific application. He commented "The Tribunal has no capacity to deal with disproportionate, repetitive or unnecessary correspondence." To take one of the Claimant's letters as an example, on 7 March 2025 the Claimant wrote an email in which he objected to REJ Khalil having mentioned that unreasonable conduct of litigation can lead to claims being dismissed and/or costs awards made. The Claimant referred to 91 emails to the court referring to the work criminal. The Claimant alleged he was "pretty sure all the solicitors I've ever hired have always got paid off by the NHS." The Claimant alleged the Tribunal should be holding the Respondent in contempt of court.
20. There was a further Preliminary Hearing before EJ L Ord on 18 March 2025. The record of hearing records the Claimant providing details of five protected disclosures. The Respondent was ordered to update the draft List of Issues and send it to the Claimant. The Claimant was given permission to add/amend this list if necessary. A final draft was to be sent to the Tribunal by 6 May 2025 ahead of a further Preliminary hearing on 16 May 2025. The Final hearing was listed for 10 days between 19 and 30 October 2026.
21. The Respondent updated the list of issues to include the details of the five protected disclosures detailed in the previous hearing.
22. In an email on 25 April 2025 the Claimant wrote that the Respondent's list of issues was not fit for purpose, that Judge Ord was aware of this and that it should be discarded. The Claimant went on to state "It is as though you are both working together, to ensure justice is avoided?" The Claimant stated he wanted to use his own list of issues.
23. By an order dated 30 April 2025 EJ L Ord wrote that the Tribunal would look to finalise the Respondent's list of issues. The orders for the Claimant to copy on the Respondent's draft were updated with a view to finalising the list by 14 May 2025.
24. By letter on 8 May 2025 Bevan Brittan wrote alleging, inter alia, that the Claimant was sending repeated emails to potential witnesses that were accusatory and confrontational. The letter contained an excerpt from emails dated 6 November 2024 as follows:

    "If you and your colleagues spent the rest of your working lives in jail for the disgusting and criminal way you have treated me, I wouldn't feel sorry for you. Jon Moore, as a Solicitor would know that your conduct is criminal. Of course; the CEO Amanda Pritchard should see to it that you are dismissed with immediate effect and ensure that your co-conspirator is also held accountable; however, in view that your criminal behaviour is clearly tolerated and encouraged by the CEO (and the entire board; and auditors) who clearly lack any moral judgement, there is zero
    chance of this happening…..

Be in no doubt; I will make an updated complaint against you; I hope you never work in your capacity as a solicitor again; you may think that sounds harsh but I won't be working again…. At least you will know that you aren't working because of your criminal actions, that 'closure' should allow you to sleep at night; even if your home is repossessed. In reality though I would like you stripped of your Pension; and for you to pay back the money that you have taken from the Tax Payer immorally…..

Do you think it is clever attempting to defraud people of their settlements that they should have been entitled to after you have destroyed their career for absolutely no reason? Do you think it is clever destroying people's careers, mental and physical health and damaging their families irreparably, while ensure they never get justice/closure? How many people have you caused to commit suicide due to your teams continued abusive criminal behaviour? Do you care; clearly you don't."

25. By email on 9 May 2025 the Claimant wrote again objecting to use of the Respondent's list of issues. The partners of Bevan Brittan were copied on the email in which the Claimant alleged solicitors were preventing or delaying justice from happening and that the Employment Tribunal was protecting criminals from justice. The Claimant referred to having copied the police on 66 emails relating to criminal behaviour.
26. On 12 May 2025 Bevan Brittan wrote on behalf of the Respondent to apply for strike out of the Claimant's claims.
27. On 16 May 2025 there was a further Preliminary Hearing before EJ L Ord. The Claimant was given permission to draft a list of issues based on the Tribunal's template, which was attached to the hearing summary. A meeting was scheduled to discuss the list of issues. The strike out application was not pursued at that time. However, today's hearing was listed to consider any renewed strike out application.
28. By email on 11 June 2025 the Claimant wrote to object to the application to strike out. The Claimant stated that "[Bevan Brittan] are representing criminals, and you with the court assistants in their refusal to uphold the law; are suppressing evidence." The email went on to accuse Bevan Brittan of perverting the course of justice and Mr Bayne of misleading the court.
29. On 12 June 2025 the Claimant sent his v4 list of issues to the Tribunal. This was the 282 page document provided to me in advance of this hearing. It is a genuine attempt to use the structure of the Tribunal's template list of issues. However, it goes substantially beyond the chronological scope of the original claim form and, for example, includes various aspects about the conduct of the litigation including allegations about "ex parte" communication between EJ L Ord and Mr Bayne. It also seeks to advance most if not every allegation as at the same time protected disclosure, detriment due to protected disclosure, direct discrimination, indirect discrimination and failure to make reasonable adjustments. Its wording is, at points, vague and generalised rather than specific.
30. There was a meeting between the Claimant and Ms Stibbs on 19 June 2025. Little to no progress seems to have been made.

31. On 16 July 2025 the Claimant wrote an email to the Tribunal saying his list of issues should be adopted and today's hearing cancelled. The Claimant copied a variety of people on this email including the Prime Minister and the Leader of the Opposition.
32. By letter dated 17 July 2025 Bevan Brittan set out its objections to the Claimant's list of issues and stated they did not feel further meetings would be of assistance. This letter asked the Claimant to identify where in his claim form the various alleged protected disclosures were referred to.
33. There were within the bundle examples of text messages sent by the Claimant to various staff at the Respondent. These refer to illegal behaviour and highlight SRA rules (implicitly suggesting they are being breached).
34. On 11 August 2025 the Claimant wrote to REJ Khalil. He accused Ms Stibbs of aiding and abetting after the fact. The email contains sections about how "woke" and extreme left wing the NHS has become" and contains lengthy sections on whether Ms Stibbs was responsible for the letter dated 17 July 2025 and the tax arrangements of Ms Stibbs as a consultant. The letter accuses Ms Stibbs of lying about the question of whether "ex parte" communication was referred to in a hearing before EJ Ord.
35. On 22 August 2025 the Respondent informed the Tribunal a list of issues had not been agreed and explained why it had not been possible to agree the Claimant's list of issues and why there had been no further meeting with the Claimant. The Respondent renewed its application to strike out the Claimant's claims.
36. On 8 September 2025 the Claimant emailed the Tribunal his objection to the strike out application.
37. The Preliminary hearing before me took place on 9 October 2025.

The Claimant's submissions and v5 List of issues

38. The Claimant provided his further written submissions and v5 of his list of issues on 30 and 31 October 2025.
39. Version 5 of the Claimant's list of issues is reduced to 168 pages and has removed 46 grievances previously contained in version 4. In v5, the Claimant now seeks to rely on 21 grievances listed in the original particulars of claim. These are grievances 1, 2, 3, 4, 5, 6, 10, 16, 20, 40, 50, 60, 80, 90, 101, 110, 200, 211, 213, 300 and 301. Most of these correspond to the following paragraphs in the Respondent's list of issues:

C LOI v5	R LOI	description
1	6m	Deletion of teams chat
2	6n	Chief of staff ignoring concerns about deletion of teams chat
3	6w	Ignoring the Claimant's dissatisfaction with Katy Wells
4	6gg	Simon Curry's email of 6 January 2023 which the Claimant says was heavy handed
5	6hh	Failure to address grievance for 7 plus months
6	6p	Bullying meeting on 14 January 2022

C LOI v5	R LOI	description
10		Steve Hubbard fails to review Claimant's progress and achievements
16	6r	Mike Lowe failure to deal with complaints
20	6s	Not moving the Claimant to a new team
40	6a	Not issuing parental leave
50	6b	Mocking the Claimant for an Excel certificate
60	9	Masters funding
80	6u	Failure to reply to SAR
90	6cc	Email of 5 September 2022
101	6c, 6d	May 2020 treatment by Steve Hubbard and Rachel Marsh
110		Conduct in 22 October 2022 meeting
200		Not investigating data loss
211		Providing more than 900 pages to review in advance of 20 March 2023 meeting
213		Raksha Jadav requiring Claimant's participation in meetings without support
300		Mark Watson and Iona Neeve outcome letter is biased
301		Emails from Vicky Gaulter and Raksha Jadav on 3 March 2023

40. As well as alleging that all of these grievances are protected disclosures, the Claimant also seeks to rely on them all as detriments due to whistleblowing, direct discrimination (all except for grievance 60 seemingly because of disability), indirect discrimination and failure to make reasonable adjustments.
41. Many of these legal classifications seem misconceived. Little mental energy seems to have been expended working out which legal label should properly apply to the various facts. For example, various matters are said to be both PCPs and detriment for whistleblowing. A PCP is predicated on the idea that it is treatment that is (or would be) applied to everyone generally. It is fundamentally inconsistent and misconceived for the Claimant to then also say that he is being treated that way (ie treated differently) because he raised a protected disclosure. The same matter cannot sensibly be said to be both.
42. Indeed, the Claimant said both in the hearing and in his written submissions that he had used AI (Chat GPT/Grok) to create the List of Issues based on the underlying grievances. In his written submissions he goes on to say that "In reality; I expect to only use 10% of the list of issues; but as a LIP; I don't know which 10% I will need … 90% of the document I don't expect to use; it is just a safety blanket as a LIP." Whilst there is no issue in principle with the Claimant having used AI, it does seem to make it harder to justify him insisting on his list of issues when he is explicitly saying he thinks it is far longer than he needs and about 90% is not focussed on what he needs to win his claim. Whilst I accept that the Claimant is a litigant in person and there is some basis for him to be concerned that he not miss something important, he needs to understand that bringing a claim in the Tribunal is

not like making a report to the police where they then investigate and work out what crime (if any) has been committed. It is for the Claimant to set out his case and the legal issues he is asking the Tribunal to make decisions on. If he asks the Tribunal to make decisions on a massively inflated claim where he considers 90% of it to be irrelevant then the hearing will take 9 times longer, cost the Respondent and the Tribunal 9 times more and accordingly deprive other claimants of those judicial resources. It also has caused and will continue to cause delays to the progress of his case. His approach is inconsistent with the overriding objective including to deal with cases proportionately to the complexity and importance of the issues, to avoid delay and to save expense. The Claimant must assist the Tribunal to further the overriding objective but is singularly failing to do so.

43. Moreover, even though the Claimant's claim form listed these grievances, they were not pleaded as protected disclosures that led him to be subjected to detriment. Although it is not the application before me, I would not be minded to allow the Claimant to amend his claim to include all these grievances as protected disclosures because to do so would enormously expand the scope of the factual enquiry required.
44. The Claimant's v5 list of issues continues to refer to many claims over which the Tribunal has no jurisdiction including criminal charges and aspects of the conduct of the litigation itself.

Conclusion on the application

45. I am entirely satisfied that the Claimant's conduct of the litigation both in terms of his approach to the question of agreeing the list of issues and the tone and content of his correspondence with both the Tribunal and the Respondent and its advisers has been unreasonable. It is unreasonable for the Claimant to be refusing to engage with a list of issues drawn largely from his own narrative relayed over the course of several preliminary hearings. It is also clear that the Claimant (in refusing to engage with the list of issues drafted at the order of EJ Ord) is in breach of the Tribunal's orders including those made at the Preliminary Hearing on 18 March 2025 and in a letter on 30 April 2025. The threatening and harassing tone of the Claimant's correspondence is also unreasonable. The Claimant refers to his emails as "written to relieve stress; like counselling." That is not justification for their tone, which is entirely unreasonable.
46. Equally, I do find that the Claimant's correspondence with both the Respondent and the Tribunal is scandalous within the meaning set out in **Bennett**. By way of example, the Claimant has at points accusing the Respondent's staff of seeking to get the Claimant to kill himself and has accused the Tribunal of protecting criminals from justice. If the Claimant is correct about there being a mention of ex parte discussions in a hearing, the transcript will show it. It seems that in insisting on being provided with a copy of the recording at public expense rather than paying for (or at the very least limiting his request to provision of) a transcript, the Claimant is by his

own actions denying himself the evidence he says he needs to support this allegation.

47. I do not consider that the Claimant is conducting his claim vexatiously. Although I struggle to understand certain aspects of the legal basis of the Claimant's claims as set out in v5 of his list of issues, I cannot say that the expense the Respondent is being put to is out of all proportion to any gain likely to accrue to the Claimant if his claim succeeds. I do not consider that the way the Claimant is using the Tribunal is significantly different from the ordinary and proper use of court process. That is to say, I think the Claimant is genuinely seeking redress for a genuine sense of grievance in relation to his alleged treatment of the Respondent. I do not accept the Claimant is just seeking to access his HR file for other purposes. It is not to say that his conduct of the litigation is reasonable, it is manifestly unreasonable and scandalous. That conduct needs to stop.
48. The key question in determining the application is whether a fair hearing is still possible in this case. Mr Bayne sought to persuade me that there is no conceivable possibility of the Claimant accepting a list of issues that could be used at a hearing when he refuses to accept guidance or instruction on the conduct of his claim even from the Tribunal. Mr Bayne also said that the impending dissolution of the Respondent would make it impossible for the Respondent to locate documents and speak to witnesses needed to defend the claim. Mr Bayne also said that witnesses may be put off giving evidence due to the threatening tone of the Claimant's correspondence.
49. Taking those concerns in reverse order, there is (as yet) no evidence before me of witnesses refusing to give evidence due to the tone of the Claimant's correspondence. Such a witness could always be ordered to attend by the Tribunal if necessary.
50. The Respondent's dissolution is not an insurmountable obstacle to disclosure or obtaining witness evidence. Government and NHS reorganisations are not uncommon. Whilst there will undoubtedly be some practical issues arising from the dissolution, I do not accept that this will substantially affect the fairness of any final hearing.
51. My largest concern is whether the Claimant will comply with the instructions of the Tribunal in relation to the preparation of the case. Several times when the Claimant has been presented with orders that he disagrees with his approach is to ignore them and complain about the judge involved. This extends to raising pre-emptory dissatisfaction with aspects of the hearing before me before he knows my decision. I am concerned that, in the Claimant's mind, if someone is not perceived as being "with him 100%" he or she is perceived as being against him and then becomes seen as part of some wide ranging (and so far totally unevidenced) conspiracy.
52. A key stage of preparing for the hearing is determining what the issues in the case are. After a reasonably good start with his relatively concise claim form, the Claimant has since failed to build on that to reach a position where the Tribunal and Respondent understand what the Claimant's case actually is. However, I am somewhat encouraged by v5 of the Claimant's list of

issues in that the Claimant has reduced the number of grievances relied on. Even v4 was a genuine attempt to work within the Tribunal's template. Reliance on AI seems to have done the Claimant more harm than good in preparation of both of those drafts.

53. On balance, I consider that a fair hearing is still possible within the current listing on the basis that the Tribunal adopts the list of issues prepared by the Respondent with the Claimant limited to the five protected disclosures detailed within that list. As mentioned above, the Claimant's claim form specifically pleads only the first of those two disclosures and I would not allow the Claimant to expand beyond the three further disclosures detailed in his letter of 28 March 2024 due to the disproportionate extent to which this would expand the factual enquiry.
54. I am also prepared to expand the list of issues to include the incidents referred to as grievances 10, 110, 200, 211, 213, 300, 301 as referred to in the claimant's v5 list of issues. I have added these (in bold underlining) to the list of issues attached to the case management orders as one claim of failure to make reasonable adjustments and the other matters are included as detriments due to whistleblowing.
55. On that basis I reject the application to strike out the Claimant's claims. I do so with the express warning that the Claimant's unreasonable and scandalous conduct of the litigation may well have costs consequences for him in the future.
56. If further details of these allegations are required by the Respondent, they are to be provided by the Claimant on request in accordance with the timetable set out in the separate Case Management Orders. The Claimant should understand that failure to provide further particulars of these matters if reasonably requested will almost certainly lead them to be excluded from the list of issues to be determined by the Tribunal. Extensive failure to cooperate on the Claimant's side may well lead to the later striking out of his claim.
57. I do not consider that I need to expressly strike out claims outside the scope of the list of issues (for example in relation to alleged criminal conduct) as the Tribunal simply has no jurisdiction to consider such matters. I understand v5 of the Claimant's list of issues to recognise this to some extent as the references to (for example) the Computer Misuse Act appear to be in the context of breaches of legal obligations shown by alleged protected disclosures rather than as standalone claims before the Tribunal in their own right. Matters said to relate to the period after the issuing of the ET1 are also not part of the claim. No permission to amend has been given in relation to such matters. I would not give it on the basis that it would expand the factual matrix unreasonably and because matters related to the conduct of litigation are subject of judicial proceedings immunity.

Approved by:

Employment Judge T Perry

11 November 2025

Sent to Parties.
26 November 2025

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/