



EMPLOYMENT TRIBUNALS

Claimant: Melissa Marshall

Respondent: Voiceability Advocacy

Heard at: London Central **On:** 28 November 2025
(in person)

Before: Employment Judge B Smith (sitting alone)

Representation

Claimant: In person

Respondent: Mr A Khan (Solicitor)

JUDGMENT

1. The claims are struck out (Rule 38 Employment Tribunal Procedure Rules 2024).
2. The claims of unauthorised deductions from wages and in respect of unpaid holiday pay are dismissed upon withdrawal (Rule 51 Employment Tribunal Procedure Rules 2024).

REASONS

1. The claimant brings claims of:
 - (i) Unfair dismissal;
 - (ii) Unfavourable treatment because of something arising in consequence of disability;
 - (iii) Failure to make reasonable adjustments; and
 - (iv) Harassment relating to disability.
2. The respondent's application is dated 4 February 2025. It is to strike out the claims on the basis that the claimant failed to provide medical evidence in compliance with the Presential Guidance set out under paragraph 8 of case management orders of EJ Joffe dated 23 January; the claim is not being actively pursued; and it was no longer possible to have a fair trial within a reasonable period. These grounds were amplified in its skeleton argument dated 27 November 2025 to include that the manner in which the claimant had conducted the proceedings had been unreasonable, and that the reasonable adjustments now sought by the claimant were not reasonable or proportionate and would impede the respondent's ability to have an effective hearing. It also submitted that an application by the claimant to amend the claim dated 25 November 2025 (not listed for determination today) was an abuse of process. It was also submitted that the claims have a low reasonable prospect of success.
3. I should record from the outset that the outcome of the claimant's recent application to amend did not affect the strike out application today, and no one suggested that it would.
4. I heard oral arguments from both sides. I considered a bundle of 171 pages and both sides relied on skeleton arguments. The parties did not ask me to take any other documents into account.

5. For today's hearing the claimant had only an electronic copy of the bundle which she said did not find that easy to use. However, it had been sent to her on Tuesday of this week electronically and was only later updated with the most recent email correspondence. In any event, the bundle contained the pleadings, correspondence between the parties and Tribunal, case management orders, and the claimant's own medical evidence. Accordingly, I was satisfied that the claimant was sufficiently able to have considered the relevant documents for a fair hearing today. They were documents that for the most part the claimant will have had for a long period of time. I was only referred to a very small number of documents by the parties during the hearing and I ensured that the content of the documents I was referred to during the hearing was identified in clear enough terms such that the claimant would not be disadvantaged by a lack of a hard copy bundle.
6. I expressly had regard to the Equal Treatment Bench Book and the Presidential Guidance: Vulnerable parties and witnesses in Employment Tribunal Proceedings throughout the hearing.
7. At the start of the hearing I explained the procedure in simple and clear language. I answered the claimant's questions before and after her submissions. It was also plain from the claimant's written submissions that she had a reasonable degree of understanding of the law, both from the respondent's written submissions and her own research. I also explained the key parts of the relevant law in clear language to the claimant during the hearing. For today, having asked the claimant about any adjustments required for this hearing, the claimant was given a break after the respondent's submissions and there was no suggestion that the claimant needed a further break. She was also reassured that she could have a break at any time if she needed it. The claimant was given a full opportunity to say everything she wanted to say and confirmed that she had done so. She also made further brief submissions after a break for my deliberation but before a decision was made and announced.

8. I gave full consideration to the authorities relied on by the parties even if not expressly mentioned here.
9. The claimant was given notice of this hearing by correspondence dated 6 August 2025 which made it clear that an in person hearing would be held to consider the above application. This was after an earlier preliminary hearing listed on 14 February 2025 was postponed because the medical evidence suggested that it would be too soon to fairly assess whether the claimant will be fit to attend a full merits hearing within a reasonable period (Tribunal letter dated 13 February 2025, EJ Joffe).
10. My decision to not permit the claimant's attendance by remote video hearing was sent to the parties with reasons on 27 November 2025 over two letters sent by email. To those reasons, also I record that even as of 22 April 2024, when the claim was being case managed by EJ Adkin, the claimant was prepared to attend in person for her own evidence, and that her remote attendance was predicated on the basis that she would be represented at the hearing with the representative physically present in the hearing room (paragraph 5 orders dated 22 April 2024). Having reflected on the correspondence, paragraph 3 of first set of reasons is amended to reflect that the orders of EJ Joffe were potentially unclear about the format of the preliminary hearing, and I now recognise that the notice of hearing for 14 February 2025 referred to it being by video. However, this does not change the fact that the notice of hearing (after the 14 February 2025 hearing was postponed on the application of the claimant) expressly stated that it would be an in person hearing and the claimant's application to attend the hearing was not made in good time before the hearing.
11. When the claimant was informed about my decision to refuse remote attendance, she replied by email on 27 November 2025 asking the Tribunal to strike out the respondent's strike out application, '*I will be attending hearing and Final trial as I feel better now than in January due to mediacation [sic] increase and therapies and I will seek justice in Tribunal in my claim as intended.*' She also indicated that she would not seek to cross-examine witnesses which would make any final hearing shorter.

12. I expressly considered at the start of the hearing that the situation had not changed and it remained the right decision for the hearing to remain an in person hearing. The medical evidence supplied did not establish that the claimant could not attend an in person hearing or that the claimant would suffer difficulties with an in person hearing such that allowing her to attend remotely would be an appropriate adjustment to ensure that there was a fair hearing. The most recent evidence of Dr Klimowicz dated 15 July 2025 was insufficient for me to decide otherwise. Also, the claimant attended and was quite properly able to present her arguments. I am satisfied that she had a fair hearing today.
13. The original full merits hearing was originally listed for 7 days to start on or around 20 January 2025 by case management orders of EJ Adkin dated 22 April 2024. The claim form was originally presented on 13 January 2024 and is about the claimant's dismissal from employment on 30 November 2023, and the claimant's sickness absence prior to that date. Claims of harassment related to disability, unpaid holiday pay and unauthorised deductions from wages were unspecified at that time. Later information provided by the claimant's then union representative dated 7 May 2024 may well have been sufficient on the claims of reasonable adjustments and harassment related disability, and in any event I am satisfied that any specification issues for those claims could be fairly dealt with in the normal Tribunal process. The claimant withdrew the unauthorised deductions from wages and holiday pay claims during today's hearing.
14. The full merits hearing was postponed by order of EJ Joffe dated 20 and 21 January 2025. The claimant did not attend the first day of the hearing but applied to postpone on the basis of ill health. The Tribunal directed the claimant to provide medical evidence which complied with the relevant Presidential Guidance on postponement of a hearing. The claimant emailed the Tribunal on that day indicating that she was hoping to have a letter from her GP. The claimant had not attended although the claimant did email at 02:31am on 20 January 2025 to request a postponement on the basis of her health, stating she was not physically and mentally well enough to attend. On the day the Tribunal clerk phoned her the claimant said she was

too unwell to attend, even remotely. EJ Joffe indicated in those orders (paragraph 4) that the Tribunal was concerned about whether there could be a fair hearing within a reasonable time. A public preliminary hearing to consider any strike out application by the respondent on that basis was therefore listed. The claimant was expressly put on notice (paragraph 5) that the Tribunal had the power to strike out the claim if medical evidence suggested that it would not be possible to have a fair hearing within a reasonable period or if the claim was not actively pursued. The hearing of 14 February 2025 was therefore listed. The claimant was ordered (paragraph 8) to provide by 31 January 2025 medical evidence about her non attendance at the January 2025 full merits hearing and which complied with the Presidential Guidance, specifically that all medical certificates and supporting medical evidence should be provided in addition to an explanation of the nature of the health condition concerned, and that medical evidence should include whether in their opinion the application is unfit to attend the hearing, the prognosis of the condition and an indication as to when that state of affairs may cease.

15. The postponement letter dated 13 February 2025 required the parties to write to the Tribunal by 27 February 2025 with any proposed directions in respect of this hearing.
16. The claimant's medical evidence was from her GP dated 20 January 2025. It confirmed a diagnosis of PDST and depression. It suggested that the claimant had spoken about a deterioration in her mental health over that week which was secondary to the extra emails required around the potential delaying of her employment tribunal and the resultant stress, leaving her increasingly anxious and in low mood and struggling to complete day to day activities. Her antidepressant dosage was increased. The GP was unable to provide a timeframe as to when she would be fit to attend because mental health conditions were inherently unpredictable. It was likely that after 2 weeks the increase in her antidepressant would start to have an effect and more so after a month.

17. A further letter dated 28 January 2025 stated that in the GP's view the claimant was too unwell to take part in the employment tribunal hearing when she consulted the GP on 20 January 2025, and in terms of the chance that she would be sufficiently well to attend a tribunal case over 7 days in Spring 2025, it was impossible to prognosticate for the claimant's mental health condition in this manner. The letter stated that having spoken with the claimant on that day it was very unlikely that she would be in a position to present for a full 7 days In Spring 2025, although there was always the possibility that she would improve faster than expected. In terms of Summer 2025, it was impossible to put a percentage on this, but it was likely that she would be able to attend by the summer. For hearing adjustments, she would '*feel better*' appearing virtually rather than in person, and may need time to process things, and for questions to be simple, and breaks every 60 mins or when feeling emotionally overwhelmed.
18. By email dated 31 January 2025 the claimant requested to postpone the hearing on 14 February 2025 stating that she was unable to respond to any further correspondence and, in effect, seeking an open ended adjournment (*'I trust that we can revisit this matter when I am feeling better...I decided with my therapist to stop responding to any of your emails now.'*)
19. By email dated 7 February 2025 the claimant asked for a postponement of the 14 February hearing asking for a delay until the end of May to allow for changed medication to take effect. On 14 May 2025 when the respondent emailed the Tribunal asking for a new listing update the claimant replied on the same day stating that she hadn't started therapy yet and asking for her peace not to be disturbed given that she found receiving emails stressful. On 24 July 2025 the claimant further emailed in reply to a chasing email sent by the respondent on the same day stating '*I only just started therapy [sic]. I need time. Theraphy [sic] lasts on average 14 to 16 weeks depending on person I was told.'* At this point the notice of today's hearing was sent on 6 August 2025.
20. The Employment Tribunal Procedure Rules 2024 say:

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—*

[...]

- (b) that the manner in which the proceedings have been conducted by ... the claimant.... 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).*

- 21. Before striking out a claim, I must ask myself whether it is possible to have a fair hearing. This includes, applying Article 6 European Convention on Human Rights, the right to have a trial within a reasonable time.
- 22. I am conscious that the events the claim is about dated back to 2023 and before. The full merits hearing has already been postponed once and it has yet to be relisted. This hearing has also already been postponed on the grounds of the claimant's ill health and it's relisting was delayed significantly as a result of the claimant's ill health. Both postponements were on the application of the claimant on medical grounds.
- 23. I am also conscious that there has been little progress in this claim other than the first case management hearing. Although the original Tribunal panel has read the papers, there has been no evidence called. This is factually different to some other authorities where the final hearing had

properly started and was simply progressing slowly. No meaningful progress on assessing the full merits of this case has been made. The case is also no longer reserved to EJ Joffe.

24. As a result of the above procedural background the case has not been relisted in just under a year since the first full merits listing.
25. I must also consider whether measures are available that are less draconian than striking out the claim: Blockbuster Entertainment Ltd v James [2006] EWCA Civ 684. Striking out must also be a proportionate response.
26. I must also ask whether there is a prognosis of when, if ever, the claimant would be well enough to take part in the proceedings.
27. I must also expressly consider the balance of prejudice in respect of each party. I fully recognise that striking out a claim is a draconian action for a Tribunal to take and that I must be particularly careful before striking out a claim involving allegations of discrimination given the public interest in such allegations being determined.
28. Before concluding that a fair trial is not possible because of a lack of recollection or availability of evidence, I must consider what evidence is necessary to determine the claim and the extent to which the quality of the evidence has diminished means that a fair hearing is not possible.
29. The claimant relies on two letters as her recent medical evidence. One is dated 30 October 2025 from Cambridge University Hospitals dated 30 October 2025 disclosed 24 November 2024 and a letter from the London Psychiatry Centre dated 4 August 2025 disclosed on 25 November 2025. The Cambridge University Hospitals letter records diagnoses of dry eyes and blepharitis, but these do not form the basis of any previous need to postpone hearings and are limited relevance.

30. The most recent medical evidence, which is not necessarily up to date, is that of a psychiatrist who saw the claimant by video call on 15 July 2025 (this is from the London Psychiatry Centre, above). It records PDST and severe persistent depression, pain and mobility problems. It does not expressly recommend any adjustments for the claimant. It states that the claimant has tried CBT Therapy but it was concluded that the claimant was too depressed for it to be successful. The claimant today suggested that this was a reference to previous attempts and that she would expect future therapy to be effective. The letter records that that the claimant feels demotivated, tired, has difficulty making decisions, feels worthless, has reduced sleep, is undertaking psychological therapy and receives appropriate support from her therapist attending to activities of daily living.
31. Equally, I must take into account the fact that the claimant has attended in person today and was able to produce a written skeleton argument in advance of this hearing. She was able to participate although the hearing had to proceed slowly to give her adequate processing time. She twice requested that the hearing slow down and this was accommodated by the Tribunal.
32. I am not persuaded that the claimant's conduct is, overall, sufficiently unreasonable or serious that this alone would justify striking out the claim. This would be too draconian in all the circumstances. However, in making this decision I am consciously separating the claimant's conduct from the fact of delay, which I will consider separately. Any issues about the claimant's amendment application can be considered as part of that application, and the manner of the application is something that can be taken into account when deciding whether or not it should be permitted.
33. I also do not consider that any non-compliance with the previous Tribunal orders about provision of medical evidence, on its own, is sufficient to strike out the claims. However, there are consequences to the extent that I have to decide this application on the evidence available and I can take the availability of medical evidence into account when making decisions on strike out on other grounds. It is right to record that an absence of up to date

medical evidence on when or if the claimant will be fit to attend a hearing has in part caused considerable delay to the determination of this application and therefore when any final hearing could be relisted. This is not the fault of the respondent. The claimant also has not provided up to date medical evidence for the hearing today despite having been given ample opportunity to do so. She has been on notice of the respondent's grounds for strike out for a considerable period of time.

34. I do not consider that there are sufficient grounds on which to find that the claimant has not actively pursued the case. She has attended today with written submissions and did provide some medical evidence. I am not persuaded that the claim is not being actively pursued such that it should be struck out, although there are clearly some limits to the claimant's engagement in terms of the lack of up to date medical evidence.
35. However, I agree with the respondent's submission that the absence of clear and reliable evidence about prognosis in the letters dated 20 and 28 January 2025 and subsequently is such that the position is unclear even now. The reference to *'likely she will be able to attend by the summer'* in the GP letter dated 28 January 2025' appears to be highly speculative given that it is accompanied by the caveat that predicting that far ahead was difficult. It transpired that the claimant appeared to have been unfit to attend throughout the summer, given her requests to postpone this hearing during that time. It was also separately expressed as a *'hope'* of the GP. The terms of the July psychiatrist letter also do not suggest that in fact the claimant necessarily was able to attend a hearing in the summer of 2025. The claimant has also failed to provide any updated or definitive evidence confirming that she is fit to attend and participate in a final hearing. Although the claimant's email dated 27 November 2025 asserted that this was the case, I was reluctant to take this at face value given the lack of corroborating evidence and the terms of the July 2025 psychiatric evidence which were not promising in terms of the claimant's current mental state.
36. I am satisfied that there is no definitive timeframe for any kind of recovery in the claimant's mental health and that this results in a persistent state of

uncertainty for the Tribunal, in terms of case management, and realistic listing of the final hearing. I also consider that any final hearing would be at a high risk of a further last minute postponement by the claimant on medical grounds given the claimant's history of seeking postponement's for medical reasons in 2025, and the lack of cogent medical evidence that her mental health has improved such that the risk of this has reduced. The fact that she has attended and participated in a 2-hour hearing today, which only required oral and written submissions on a relatively narrow issue, does not mean that she can necessarily attend a 6 day (or longer) hearing involving cross-examination of her and her cross-examining the respondent's witnesses.

37. I have consulted with the Tribunal listing office and the next available listing for a 6 day case is not before August 2027.
38. In light of this, I am satisfied that there is no prospect of a fair trial within a reasonable timeframe. I am not persuaded that the circumstances of this case are such that would justify replacing other parties' listings with the claimants in order for this case to be heard sooner. This is because the overriding objective includes taking into account the need of other Tribunal users and it would be unfair on other cases for this claim to take priority in particular in circumstances where the claimant has already had an earlier listing opportunity. Relisting this case sooner would be less draconian than striking it out. However, I consider that relisting the case sooner would be wholly contrary to the overriding objective. It is not a reasonable or proportionate step to take given the existing interests of other Tribunal users. I cannot identify any other less draconian step available and no alternative step was suggested to me.
39. I must expressly balance the interests of both sides in making this decision. I recognise that it will be severely prejudicial for the claimant to have the claims struck out. However, it will be also severely prejudicial for the respondent to have to wait until August 2027 for the claims to be determined. It results in ongoing uncertainty and expense. There is the risk of further applications by the claimant including to postpone on medical

grounds. Witnesses have left the respondent and there is no guarantee of others being available or willing to attend in August 2027.

40. More specifically, the claim primarily concerns the claimant's redundancy. Sarah Smith (Director of People Management) and Clare Mills (Director of People) had already left the respondent before giving any witness evidence for the original final hearing. They would have been able to give evidence about the business rationale for the redundancy and the redundancy process itself, respectively. Whilst the respondent felt able to proceed with the previously listed final hearing with other witnesses, the prejudice to the respondent must be understood in the context of it having already lost two of its important witnesses before there was further delay arising from the first postponement.
41. More importantly, of the respondent's three witnesses for the original final hearing, Mr Breckell and Ms Duke have also now left the respondent. There is no confirmation that they are available and willing to attend a postponed final hearing in August 2027 and there are good grounds to find that they will not be available given the passage of time and the fact that they no longer work for the respondent. They are key witnesses because Mr Breckell heard the claimant's appeal of the redundancy decision combined with her grievance such that this was the final decision on the claimant's dismissal. Also, Ms Duke was the individual who made the decision to dismiss. The only witness that is likely to be available to the respondent to give oral evidence at a postponed final hearing is Ms Masterman, of HR, who was the HR representative for the redundancy procedure and grievance appeal. This puts the respondent and the claimant at a serious disadvantage because the key decision makers are unlikely to be available at a postponed hearing, and even if they may be available now, there is so long between now and the next listing that attendance could not be guaranteed or necessarily expected of them as former employees. Given the need for the respondent to provide an explanation for the business rationale and why a pool of one was not in of itself suspicious, the respondent would in my judgment face a very significant disadvantage if the hearing were to take place in August 2027. The claimant would be asking

the Tribunal to draw adverse inferences from the documents and the respondent would not be in a fair position to rebut any such inference about whether or not the pool of one was suspicious. Nor could any explanation for the redundancy be properly tested in the circumstances. This would be deeply unfair to the respondent and cause it very significant prejudice.

42. The claimant herself, in her written submissions, acknowledges that four of the five key witnesses have left the respondent.
43. I am not persuaded that either sides submissions on the merits are enough to be determinative of the application. However, the claimant's main point that a pool of one in a redundancy exercise is in of itself suspicious, and the timing of her disclosed disability, is not persuasive to me that she necessarily has a strong case on the face of things. This is because a pool of one is often justified in the context of restructures. Equally, I am being very careful not to assess the merits in a summary manner without good cause or evidence, and I am not making a finding that she has a weak case.
44. Rather, the nature of the claimant's case is such that witness evidence is in my judgment of real importance to a fair determination of her claims. I am not persuaded that this was a claim where the bulk of the evidence was in documentary form such that oral evidence was less important and a fair hearing mostly on the documents was possible.
45. Moreover, the claimant's submissions on merits underline the importance of the Tribunal hearing oral evidence from the relevant decision makers. The claimant's case is that, on the documents, the situation calls for an explanation such that she has a strong case. If this is right then the oral explanations by all of those involved about the restructure and why a pool of one is not suspicious is absolutely vital to the respondent's case and it is difficult to see how a fair hearing can take place without that.
46. I reject the claimant's submission that this application is motivated by the claimant having submitted a DSAR request to the respondent. Any

information likely to arise from the DSAR request is equally likely to have been already disclosed to the claimant as part of disclosure in this case. Although the claimant believes that the DSAR will reveal communications between managers, those documents should already have already been disclosed if they existed. Also, there is no guarantee that the relevant individuals who may have made communications about the claimant in fact did so. Also, a DSAR request is for the claimant's personal data which is distinct from a right to access documents. I reject the claimant's suspicions about the respondent's motivation as unwarranted on the basis of the material available to me.

47. Although the claimant submitted that cross-examination time for a final hearing would be reduced if the respondent had only one witness, as is now expected. However, I am satisfied on the basis of the pace required for a fair hearing today that the existing 6 day listing remains appropriate, given the need for reading time, and the fact that any cross-examination of the claimant would need to go at a very slow pace given her need for additional processing time. The claimant believed that she could manage a hearing now if hearings were shorter (eg. 3-4 hours) but the claimant also wants to wait for some therapy to be completed. However, the claimant's contention that she was currently fit to attend a full hearing is not supported by medical evidence. The claimant today, when asked why there was no up to date medical evidence on her ability to participate in a fair hearing, relied on her January 2025 GP letter (to the extent that predicting future fitness to attend was difficult given her conditions) and the psychiatrist's evidence. The claimant stated to the effect that she would know best when she was able to attend and participate in a final hearing but she wouldn't really know until she tested herself. It follows that even on the claimant's own position prognosis remains uncertain and there is no cogent evidence that she would be well enough for a final hearing even in August 2027. A finding that she is likely to be well enough would be entirely speculative.
48. I do not need to consider the claimant's requests for adjustments for the final hearing at this stage, other than to note that if granted they would likely

increase the length of the final hearing or at least ensure that it would last 6 days.

49. In all the circumstances, I am satisfied that this is one of the rare and exceptional cases where the history of proceedings and prejudice to the respondent arising from delay is such that the only proportionate response is for the claims to be struck out under Rule 38(1)(e) namely that it is no longer possible to have a fair hearing in respect of the claim. There can be no fair trial within a reasonable timeframe given the next available listing of this case.

Approved by
Employment Judge B Smith
28 November 2025

SENT TO THE PARTIES ON

3 December 2025

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FOR THE TRIBUNAL OFFICE