



EMPLOYMENT TRIBUNALS

Claimant: Mrs Sehar Omar

Respondent: JPMorgan Chase Bank, N.A. – London Branch

Heard at: East London Hearing Centre (by Cloud Video Platform)

On: 30 and 31 October 2025

Before: Employment Judge Barrett

Representation

Claimant: Did not attend and was not represented

Respondent: Mr Andrew Burns KC

JUDGMENT

The claim is struck out.

REASONS

This has been a remote hearing, which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform. A face-to-face hearing was not held, because it was not practicable, and all issues could be determined in a remote hearing.

Introduction and procedural background

1. The Claimant was employed by the Respondent bank in the role of Senior Counsel in Corporate Legal from 4 April 2022 to 20 December 2024. Following a period of early conciliation between 18 March and 29 April 2024, she presented an ET1 claim form to the Tribunal making complaints of race and disability discrimination. She provided further information about her claim on 20 September 2024.

2. The issues in the Claimant's claim were discussed at a preliminary hearing conducted by Employment Judge Massarella on 28 October 2024. An agreed list of issues was appended to the case management order sent to the parties following that hearing. The Claimant made complaints of direct disability discrimination, disability-related harassment and direct race discrimination. The allegations in these complaints related to events which were said to have occurred between October 2023 and March 2024. They included allegations that the Respondent required the Claimant to work longer hours than was recommended and undertake an unreasonably heavy workload after she returned to work from a period of sick leave on 1 November 2023, and that her sick pay was stopped from 1 August 2024 during a subsequent period of sick leave.
3. Employment Judge Massarella listed a listing hearing on 1 April 2025, when it was anticipated that an 8-day final hearing would be listed to determine the complaints.
4. In November 2024, the Claimant told the Respondent that she was pregnant.
5. On or around 10 December 2024, the Respondent's solicitors were contacted by lawyers representing Confluence Technologies, Inc ("Confluence"). Confluence informed the Respondent that the Claimant had been employed on a full-time basis as Legal Counsel for StatPro Limited ("StatPro"), a wholly owned subsidiary of Confluence, from 14 November 2022. In response to this information, the Respondent instigated a disciplinary process to investigate whether the Claimant had committed misconduct by undertaking another role simultaneously while working for the Respondent. The disciplinary investigation also looked at whether the Claimant had misrepresented her qualifications when applying for her role at the Respondent. The Claimant denied the allegations but was dismissed for gross misconduct on 20 December 2024.
6. On 17 January 2025, the Respondent wrote to the Tribunal requesting that a preliminary hearing be listed and indicating that it intended to apply to strike out the Claimant's claim on the basis of matters uncovered in the disciplinary investigation. On 20 January 2025 the Claimant submitted a response to the Tribunal denying the disciplinary allegations. (The Respondent says this response was not truthful and was an example of the Claimant conducting proceedings in a way that was unreasonable, scandalous and vexatious.)
7. The Tribunal listed a preliminary hearing for case management which was conducted by Employment Judge Gordon Walker on 19 March 2025. Both the Claimant and the Respondent presented written 'outline submissions' in advance of the hearing. The Claimant's position at the hearing was that she had been the victim of identity fraud and that her dismissal had been an act of pregnancy discrimination. Employment Judge Gordon Walker:
 - 7.1. Listed a public preliminary hearing on 5-6 June 2025 to consider: (1) the Respondent's application for strike-out, or alternatively a deposit order; and (2) the Claimant's application to amend her claim to add complaints of pregnancy and race discrimination. The Claimant had indicated that she wished to make such an amendment application at the 19 March 2025 hearing; she was directed to send a written amendment application by 30 April 2025.

- 7.2. Made an order for specific disclosure that the Claimant provide by 2 April 2025: all correspondence between her personal email address and Confluence or StatPro from October 2022 to date; screenshots of her inbox and sent box using specified search terms; bank statements from November 2022 to January 2025 for the account the Respondent paid her salary into showing all incoming sums; and all documents relating to the Claimant reporting identity fraud to the relevant authorities.
- 7.3. Directed that by 2 April 2025 the Claimant must inform the Tribunal and the Respondent of her new address, the Claimant having moved since lodging her ET1.
- 7.4. Issued a third-party disclosure order in respect of documents relating to the Claimant held by Confluence / StatPro.
8. On 2 April 2024 the Claimant sent screenshots of her email account, the Police Action Fraud portal showing a report had been submitted and her bank account to the Respondent's solicitor. However, she did not send her home address, full bank statements, copies of any emails to Confluence or StatPro or the content of any identity fraud report.
9. On 22 April 2025, the Claimant applied for postponement of the 5-6 June 2025 hearing on the basis that she was suffering from a decline in her mental health. She appended a letter of the same date with a Priory letterhead, apparently from a Consultant Psychiatrist at the Bristol Wellbeing Centre, stating, "*I am writing to provide a mental health doctor's note for Sehar Omar, who is my client and attends regular therapy sessions with me. Based on my recent evaluation on 15th of April 2025, I noticed that Sehar's mental health condition is deteriorating...*" The letter stated that the Claimant had been prescribed medication and recommended 6 months be allowed for this to take effect.
10. On 2 June 2025, the Respondent sent the Claimant its skeleton argument outlining its position as to why her claim should be struck out. That skeleton argument was substantively similar to the skeleton provided on behalf of the Respondent for this hearing, save that the latter had been updated to reflect subsequent events.
11. On 3 June 2025, Regional Employment Judge Burgher directed that the preliminary hearing listed for 5-6 June 2025 be postponed and relisted on 30-31 October 2025 (ie., this hearing).
12. On 11 September 2025, the Claimant emailed the Tribunal saying, "*Please see attached letter from my psychiatrist.*" The attached letter of the same date appeared to be from the same Consultant Psychiatrist at the Bristol Wellbeing Centre and stated, "*I am writing to provide a mental health doctor's note for Sehar Omar, who is my client and attends regular therapy sessions with me. Based on my recent evaluation on 8th September 2025, I noticed that Sehar's mental health condition is unstable and she is not fit to participate in Employment tribunal proceedings for the foreseeable future.*"
13. This was the last contact from the Claimant with either the Tribunal or the Respondent's solicitors prior to this hearing.

14. On 16 October 2025, the Respondent wrote to the Tribunal opposing the Claimant's application to postpone (accepting her email of 11 September 2025 to amount to such an application) and appending an email from the Priory Group dated 1 October 2025. The Respondent's solicitors had asked the Priory Group to confirm whether the Consultant Psychiatrist named on the letter the Claimant submitted to the Tribunal on 11 September 2025 had in fact written that letter. An email in response to that query stated that doctor in question did not write the letter.

The hearing

15. The Respondent provided the following documents in advance of the hearing:
 - 15.1. A skeleton argument together with three case authorities it referred to;
 - 15.2. A bundle of documents numbering 710 pages; and
 - 15.3. Two witness statements, from:
 - 15.3.1. Isha Verma, Employee Relations Partner at the Respondent, and
 - 15.3.2. Alison Fraser, formerly Chief Legal Officer of Confluence.
16. On the morning in advance of the hearing, the Tribunal clerk twice attempted to call the Claimant to check that she was intending to participate, but the calls were not picked up. The clerk then emailed the Claimant to confirm that the hearing was going ahead and she would be expected to attend, including the CVP log in link and details for convenience of access.
17. The Claimant did not log into the CVP hearing room at the start of the hearing. After an initial discussion I adjourned the hearing to 11.15am to read the witness statements and core documents, and to give the Claimant another opportunity to join the hearing. The Tribunal clerk continued to try to contact her by telephone, without success.
18. At 11.15am the Respondent's counsel and other attendees rejoined the hearing but the Claimant was still absent. I took the decision to proceed with the hearing in her absence, for the following reasons:
 - 18.1. Rule 47 of the Employment Tribunal Procedure Rules 2024 stipulates that:

If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.
 - 18.2. To dismiss the claim simply on the basis of the Claimant's non-attendance without considering the substantive merits of the Respondent's strike out application would be a draconian course. The Claimant was an unrepresented party who had written to the Tribunal flagging a health issue in advance of the hearing.

- 18.3. However, to adjourn the hearing did not appear to be in accordance with the overriding objective to deal with the case fairly and justly, including by taking a proportionate approach and avoiding delay. The hearing had already been adjourned once in June. In light of the Priory's email, I did not consider that I had adequate medical evidence before me to support a further adjournment.
- 18.4. The fairest course would be the to proceed with the hearing. Any unfairness occasioned to the Claimant by doing so could be mitigated by (1) giving her a further opportunity to attend during the course of the listed hearing or alternatively to make submissions in writing, and (2) the provision in the Employment Tribunal Procedure Rules that would enable the Claimant to apply for reconsideration of the outcome of the hearing if necessary, in the case that there was some matter relating to her ability to attend which was outside my knowledge at the time.
19. Both Ms Fraser and Ms Verma gave witness evidence on behalf of the Respondent.
20. Mr Burns KC made submissions on strike out.
21. The hearing was adjourned shortly after 1pm on 30 October 2025.
22. That afternoon, the Tribunal clerk wrote to the Claimant in the following terms:

'I have been instructed by Employment Judge Barrett to write to you as follows:

A hearing was listed for 30-31 October 2025 to consider, amongst other things, the respondent's application to strike out your claim. You did not attend the hearing this morning. After the Tribunal had made all practicable attempts to contact you, I decided to commence the hearing in your absence, in accordance with rule 47 of the Employment Tribunal Procedure Rules.

The hearing has now been adjourned and will reconvene at 2pm on Friday 31 October 2025.

I am considering whether to strike out your claim. The respondent says it should be struck out because:

- it is scandalous or vexatious and has no reasonable prospect of success (r.38(1)(a) ET Rules 2024) and/or**
- there has been scandalous, unreasonable or vexatious conduct of the proceedings by the Claimant (r.38(1)(b) ET Rules 2024) and/or**
- non-compliance with an order of the tribunal (r.38(1)(c) ET Rules 2024) where a fair trial of the issues is not possible.**

If you wish to object to this proposal, you must:

- attend the reconvened hearing at 2pm tomorrow and give your reasons why the claim should not be struck out; and/or**
- send written reasons as to why the claim should not be struck out.**

If you decide to send written reasons, they must be sent to the Tribunal and the respondent by 12pm on 31 October 2025 at the latest.'

23. The Claimant replied by email at 4.15pm stating that she was not mentally fit to participate in the hearing and requesting that the hearing be adjourned for a further period. I considered what she said in support of that request but did not consider that it altered the balance of factors which I have outlined above in relation to the application of rule 47. I decided to take into account what the Claimant said in that email about the proposal to strike out her claim as her written submission in opposition, and I return to the content of her email below.
24. The Respondent sent a further written submission during the morning of 31 October 2025 in response to the Claimant's email of the preceding afternoon. It noted that the Claimant had been able to respond promptly and fully in writing to Tribunal correspondence, which was said to aggravate her failure to engage before that and demonstrate that she was well enough to respond to the strike out application in writing had she chosen to do so.
25. At 12.23 on 31 October 2025, an email was sent to the Tribunal from the Claimant's husband stating *"My wife is sick and unable to send any communication to the tribunal. I have sent the last email as I know when she is well she will be devastated to know that her case has been struck out and this could potentially lead to her mental health deteriorating."* This creates a confusing picture, but I am content for the purposes of reaching a decision to take into account the matters contained in the Claimant's email of 30 October 2025 as submissions made either by her or on her behalf and draw no adverse inference from her husband's email. The Respondent has not invited me to do so.
26. A law reporter attended on the afternoon of the second day of the hearing, and I gave permission for access to the hearing bundle and witness statements for the duration of the hearing only. I am grateful to the Respondent's solicitors for facilitating a temporary remote access link to these documents.

Evidence presented

27. Ms Fraser gave evidence that she had recruited the Claimant and line managed her in her full-time role at StatPro from 14 November 2022 until the Claimant resigned on 7 January 2025. The Claimant worked remotely from home and participated in frequent video calls with Ms Fraser. Ms Fraser discovered by chance that the Claimant was also working for the Respondent. On 2 December 2024, Ms Fraser accessed the Claimant's work files because the Claimant was on sick leave, and it had become necessary to reallocate her work. Ms Fraser discovered in the Claimant's files the agreed list of issues document from this litigation, and a copy of the Claimant's CV which differed from the one submitted when she applied for the role at StatPro and indicated ongoing employment at the Respondent. It was these discoveries that resulted in Confluence contacting the Respondent as mentioned above.
28. By reference to documents in the hearing bundle disclosed by StatPro, Ms Fraser stated that:
 - 28.1. StatPro's onboarding document completed at the commencement of employment contained information provided by the Claimant at that time, including her full name, date of birth, National Insurance number, home address, personal email address and bank account number for salary payments.

- 28.2. She had received emails from the Claimant using that personal email address, and examples of such emails were in the hearing bundle.
 - 28.3. Amongst the documents discovered in the Claimant's work files was a screenshot showing part of a bank statement for the same bank account.
 - 28.4. The Claimant had submitted a MATB1 form to StatPro dated 18 November 2024 in connection with her pregnancy.
 - 28.5. In correspondence on 17 December 2024, the Claimant wrote to managers at Confluence that she had a close friend with the same name who worked at the Respondent and whom she was assisting with an Employment Tribunal claim against the Respondent, and that the CV was also drafted for her friend.
 - 28.6. Ms Fraser had seen a photocopy of the Claimant's passport contained in the hearing bundle (also discovered amongst the Claimant's documents on StatPro's system) and the picture showed the same person whom she had line managed.
29. Ms Verma gave evidence that she provided HR support in relation to the disciplinary process which resulted in the Claimant's dismissal. She had not personally met the Claimant. By reference to documents in the bundle disclosed by the Respondent, Ms Verma stated that:
- 29.1. The Claimant had also submitted a MATB1 Form dated 18 November 2024 to the Respondent.
 - 29.2. On 13 December 2024, Ms Verma had sent the Claimant a disciplinary invitation letter outlining the allegation that she had undertaken employment at StatPro while working for the Respondent. The Claimant had responded on the same day saying she had never heard of Confluence or StatPro, that she had been a victim of fraud and that her husband was reporting the matter to the police. The Claimant sent a further email on the same evening saying she had been redirected to Action Fraud who were investigating the matter.
 - 29.3. Meanwhile, the Claimant's manner of written communication for the purposes of these proceedings had given rise to a concern at the Respondent that she was not, as she had purported to be when applying for her role at the Respondent, a qualified barrister. The Claimant's CV submitted at the time she joined the Respondent stated that she was a member of 'Middle Temple Bar Association' and 'Admitted in the England and Wales Bar Council in 2013'. Ms Verma's colleague made inquiries of the Bar Council and the four Inns of Court, all of which organisations confirmed by email that they had no record of a barrister with the Claimant's maiden or married name. Ms Verma told the Claimant on 17 December 2024 that a further allegation that the Claimant had misrepresented her qualifications was added to the disciplinary charge.
 - 29.4. Later on the same day, the Claimant's husband sent an email to Ms Verma and others at the Respondent stating that the Claimant had been admitted to hospital with a health condition relating to her pregnancy. He attached to the email a letter with a 'Kingston Private Health' and

'Kingston Hospital NHS Foundation Trust' dual header, incorrectly dated 17 November 2024. The sender's name was given as 'Kingston Private Maternity'. The letter stated that the Claimant had been admitted to the Kingston maternity ward and concluded that:

'The stress caused by her employer is causing substantial complications to Sehar's health and her baby's health. We strongly suggest from a medical professional point of view that you withhold your investigation until the baby is delivered and Sehar's health can be stabilized.'

- 29.5. Ms Verma thought the language and tone of the letter was unusual and there was an outline around the logo header which looked wrong. She noted that the Claimant had previously sent a letter in the same format to the Respondent's HR team on 20 November 2024. That letter had stated "*I have penciled [sic] in your planned C-Section for 3rd January 2025*". She asked a colleague to check the veracity of these letters.
- 29.6. On 19 December 2024, a medical secretary at the hospital emailed the Respondent stating that only one consultant was currently offering private maternity services at Kingston Private Health. The medical secretary was responsible for sending out his correspondence and confirmed the letters in question had not been sent by them. Ms Verma wrote to the Claimant on 19 December 2024, adding to the disciplinary charges against her the allegation that she had falsified two letters, one in an attempt to delay the disciplinary proceedings.
30. It was an inevitable consequence of the decision to proceed in the Claimant's absence that she was not able to ask questions of the witnesses to challenge their accounts. I consider that both witnesses gave clear and credible evidence which was consistent with the contemporaneous documents in the bundle.
31. The following matters were also apparent on the basis of the documents shown to me:
 - 31.1. Both the Respondent and StatPro were provided with the same personal email address, National Insurance number, bank account number and home address for the Claimant.
 - 31.2. The bank statement screenshot showed payments in and out on dates between 12 and 30 June 2023. Sums had been paid into the account by both StatPro and the Respondent consistent with monthly salary payments. Outgoing payments were made in respect of online shopping and purchases made in the same area where the Claimant's home address was located.
 - 31.3. Both the Respondent and StatPro provided contracts of employment in the Claimant's name under which she was obliged to work full-time office hours from Monday to Friday. The StatPro contract shows a start date of 14 November 2022, at which time, according the Claimant's claim in this litigation, she was working for the Respondent.
 - 31.4. The identical MATB1 form certifying the Claimant's pregnancy was submitted to both the Respondent and to StatPro.

- 31.5. While it went beyond the scope of the hearing to conduct a full review of the medical letters provided by the Claimant, it is notable that unusual phrasing (for example, positively asserting that the Claimant has suffered discrimination at work) and spelling (e.g. spelling “severe” as “sever”) crops up in letters which are on their face sent by a number of different clinicians across different disciplines.

Submissions from both parties

32. I have considered the Claimant’s written representations to the Tribunal dated 20 January 2025, 18 March 2025 and 30 October 2025.

33. The Claimant’s written submission to the Tribunal dated 20 January 2025 set out her position in response to the disciplinary allegations the Respondent made against her. The letter alleged that the disciplinary allegations were false and had been fabricated by the Respondent in response to the Claimant notifying the Respondent of her pregnancy. In response to the specific allegations:

33.1. The Claimant denied working for StatPro and said she had never heard of the organisation. She stated that she had reported the identity fraud to the police.

33.2. She denied falsifying the two letters from Kingston Private Maternity and contended that *“the letters were submitted from a midwife of a specialist team who worked alongside the Surrey Mental Health Team to provide me with specialist care”*.

33.3. In response to the allegation that she had given inaccurate information about her qualifications, she wrote *“I did qualify as a barrister and was called to the bar by Middle Temple Inn and can provide my Middle Temple membership card to the tribunal”*.

34. The Claimant submitted that:

‘My claim is far from vexatious, scandalous or unreasonable. I have been through discrimination after discrimination, harassed and intimidated to withdraw my claim. I was first discriminated against for being physically disabled, then when I became pregnant, I was wrongfully dismissed and discriminated for being pregnant. When I presented my proof and explained myself, I wasn’t listened to or believed to be credible due to my race.’

and:

‘If this claim was to be struck out without a trial and the above expert evidence not presented at the trial, this will be a great injustice in our British legal system. The public would lose trust, and huge corporate organisations would be able to continue to discriminate against vulnerable employees. I have a high chance of success with strong credible evidence. The tribunal should continue to proceed with the existing case management timetable and both parties to present their arguments and evidence at the trial.’

35. The Claimant’s ‘outline submissions’ on 18 March 2025 submitted in advance of the preliminary hearing the following day reiterated that she had been the victim of identity fraud and the person who had worked for StatPro had stolen her

National Insurance number, hacked into her email address, and taken from it a copy of her passport and MAT B1 form. She repeated the submissions in opposition to strike out I have cited above.

36. Lastly, as mentioned above the Claimant submitted an email during the course of this hearing which I treat as her written representations on the strike out application. The relevant part of her email says:

'The Respondent have their own Occupational Therapist evidence regarding my mental health issues which they have themselves compiled on me. The Occupational Therapist hired by JP Morgan assessed my health and mental health for nearly 2 years. They know that my health issues are genuine and are now doing their best to throw my case out based on a fake email that they have sent to the tribunal to claim that my case is vexation.

If my case is struck out I will appeal to the highest tribunal/court possible. This is prejudice and unjust. How can you fairly assess my case without me being present. I need to be mentally fit to attend such hearings and I am NOT fit right now. The tribunal is adding unreasonable pressure on me and siding with the respondent. It is easier and time saving for everyone to just strike my case out. This is unfair and unjust.

If you review my case you can see clear evidence in a written format where my manager clearly discriminated against me for sacking me from my job role for being disabled. I have strong chance of succeeding in my claim for discrimination and unfair dismissal. I have never had two jobs at the same time. This is a propaganda that JP Morgan made up to force me to withdraw my claim.'

37. For the Respondent, Mr Burns KC submitted that the Claimant's Tribunal claim was dishonest from the outset and had been conducted dishonestly and unreasonably. He asked me to strike it out because:

- 37.1. The claim was scandalous or vexatious and had no reasonable prospect of success (r.38(1)(a) ET Rules 2024) and/or
- 37.2. there had been scandalous, unreasonable or vexatious conduct of the proceedings by the Claimant (r.38(1)(b) ET Rules 2024) and/or
- 37.3. non-compliance with an order of the tribunal (r.38(1)(c) ET Rules 2024) where a fair trial of the issues is not possible.

38. Mr Burns KC in both his skeleton argument and oral submissions took pains to emphasise how high the threshold is for striking out a claim, particularly a discrimination claim, and particularly where the Claimant is an unrepresented party. He cited case law, which I will come on to, describing the power to strike out a claim as a draconian one, to be exercised with caution. However, he said this was a clear case in which the Claimant's conduct had been scandalous, vexatious and unreasonable, a fair trial was no longer possible in the light of what he described as her "fundamental dishonesty", and that strike out was the only proportionate response in the circumstances. He premised this argument on the following submissions as to the factual circumstances:

- 38.1. That the claim itself was based on the false premise that the Claimant's sole employer was the Respondent. The evidence showed that she had been working for StatPro simultaneously.

- 38.2. That the Claimant had made untrue statements to the Tribunal in her 20 January 2025 submission, including by her denial of joint employment, averment she qualified as a barrister, and statement that she had not falsified the Kingston Private Maternity letters. In relation to the latter, he suggested the Claimant's explanation the letters were sent by a midwife working alongside a mental health team was 'nonsensical' because someone in such a role would not have been in a position to schedule a C-section. Further, it was submitted that the Claimant had forged the letters sent to the Tribunal in support of her postponement applications.
- 38.3. That the Claimant's conduct in refusing to disclose her bank statements for the period of the duplicate employment or her home address amounted to a failure to obey the Tribunal's disclosure order and further unreasonable conduct of her claim.
39. Mr Burns KC did not put his argument on the basis that a fair trial was precluded because the Claimant's conduct would adversely impact upon her credibility and on the reliance that could be placed on documents she had adduced, should the matter proceed to trial, or not solely on that basis. Rather, he invited me to consider whether a fair trial was still possible taking into account all relevant factors, including the further Tribunal resources that would be required, and the overriding objective to deal with the case fairly and justly. He submitted that the Claimant by her own conduct had forfeited her right to have her claim adjudicated by the Tribunal.

The law

40. Rule 38 Employment Tribunal Procedure Rules 2024 provides: -
- (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).**
41. For a tribunal to strike out for scandalous, vexatious or 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. In *Blockbuster Entertainment Ltd v James* [2006] IRLR 630, CA, Sedley LJ held:

'5. This power, as the employment tribunal reminded itself, is a draconic power, not to be readily exercised. It comes into being if, as in the judgment of the tribunal had happened here, a party has been conducting its side of the proceedings unreasonably. The two cardinal conditions for its exercise are either that the unreasonable conduct has taken the form of deliberate and persistent disregard of required procedural steps, or that it has made a fair trial impossible. If these conditions are fulfilled, it becomes necessary to consider whether, even so, striking out is a proportionate response.

[...]

23. The particular question in a case such as the present is whether there is a less drastic means to the end for which the strike-out power exists. The answer has to take into account the fact – if it is a fact – that the tribunal is ready to try the claims; or – as the case may be – that there is still time in which orderly preparation can be made. It must not, of course, ignore either the duration or the character of the unreasonable conduct without which the question of proportionality would not have arisen; but it must even so keep in mind the purpose for which it and its procedures exist.'

42. In *Bolch v Chipman* [2004] IRLR 140, Burton P offered guidance as to the questions which must be answered on an application for strike out under the predecessor to rule 37(1)(b):

'(1) There must be a conclusion by the Tribunal not simply that a party has behaved unreasonably but that the proceedings have been conducted by or on his behalf unreasonably.

[...]

Assuming there be a finding that the proceedings have been conducted scandalously, unreasonably or vexatiously, that is not the final question so far as leading on to an order that the Notice of Appearance must be struck out.

The helpful and influential decision of the Employment Appeal Tribunal, per Lindsay P, in *De Keyser Ltd v Wilson* [2001] IRLR 324 is directly in point. *De Keyser* makes it plain that there can be circumstances in which a finding can lead straight to a debarring order. Such an example, and we note paragraph 25 of Lindsay P's judgment, is "*wilful, deliberate or contumelious disobedience*" of the Order of a court.

But in ordinary circumstances it is plain from Lindsay P's judgment that what is required before there can be a strike out of a Notice of Appearance or indeed an Originating Application is a conclusion as to whether a fair trial is or is not still possible.

[...]

Once there has been a conclusion, if there has been, that the proceedings have been conducted in breach of Rule 15 (2) (d), and that a fair trial is not possible, there still remains the question as to what remedy the tribunal considers appropriate, which is proportionate to its conclusion. It is also possible, of course, that there can be a remedy, even in the absence of a conclusion that a fair trial is no longer possible, which amounts to some kind of punishment, but which, if it does not drive the defendant from the judgment seat (in the words of Millett J) may still be an appropriate penalty

to impose, provided that it does not lead to a debarring from the case in its entirety, but some lesser penalty

But even if the question of a fair trial is found against such a party, the question still arises as to consequence. That is clear because the remedy, under Rule 15 (2) (d), is or can be the striking out of the Notice of Appearance. The effect of a Notice of Appearance being struck out is of course that there is no Notice of Appearance served.'

43. It follows that even if one or more of the criteria for strike out under rule 38 are satisfied, the Tribunal must go on to separately consider whether or not to exercise its discretion to strike out the claim or part of the claim, taking a proportionate approach: see *HM Prison Service v Dalby* [2003] IRLR 694; *Hasan v Tesco Stores Ltd* UKEAT/0098/16.
44. Mr Burns KC referred to the civil case, *Arrow Nominees Inc v Blackledge* [2000] CP Rep 59, in which the claimant company produced forged documents in standard disclosure. The defendant's strike out application under the CPR was refused on the basis that despite the forged documents, a fair trial was still possible. The application was renewed when further evidence of fraud emerged during the trial, and again refused. The Court of Appeal held that even if there was a basis for advancing the claim having excluded the forged documents, the judge had been wrong to refuse the second strike out application. Chadwick LJ held at §§54-55:

'... the object of the rules as to discovery is to secure the fair trial of the action in accordance with the due process of the Court; and that, accordingly, a party is not to be deprived of his right to a proper trial as a penalty for disobedience of those rules - even if such disobedience amounts to contempt for or defiance of the court - if that object is ultimately secured, by (for example) the late production of a document which has been withheld. But where a litigant's conduct puts the fairness of the trial in jeopardy, where it is such that any judgment in favour of the litigant would have to be regarded as unsafe, or where it amounts to such an abuse of the process of the court as to render further proceedings unsatisfactory and to prevent the court from doing justice, the court is entitled - indeed, I would hold bound - to refuse to allow that litigant to take further part in the proceedings and (where appropriate) to determine the proceedings against him. The reason, as it seems to me, is that it is no part of the court's function to proceed to trial if to do so would give rise to a substantial risk of injustice. The function of the court is to do justice between the parties; not to allow its process to be used as a means of achieving injustice. A litigant who has demonstrated that he is determined to pursue proceedings with the object of preventing a fair trial has forfeited his right to take part in a trial. His object is inimical to the process which he purports to invoke.

55. Further, in this context, a fair trial is a trial which is conducted without an undue expenditure of time and money; and with a proper regard to the demands of other litigants upon the finite resources of the court. The court does not do justice to the other parties to the proceedings in question if it allows its process to be abused so that the real point in issue becomes subordinated to an investigation into the effect which the admittedly fraudulent conduct of one party in connection with the process of litigation has had on the fairness of the trial itself...'

45. Mr Burns KC also cited *Masood v Zahoor* [2010] 1 WLR 746, in which the trial judge found that documents relied on by both parties to the litigation were forgeries but refused the defendants' application made at the close of the trial to strike out the claim. The Court of Appeal, applying *Arrow Nominees*, held that the fact the defendants had also been guilty of misconduct was irrelevant; "*the sole question was whether, by reason of [the Claimant's] forgeries and fraudulent evidence, the claimants had forfeited the right to have an adjudication of their claims*" (§75).
46. Another case concerning a forged document, in the employment context, is *Sud v The Mayor and Burgesses of the London Borough of Hounslow* UAEATPA/0182/14. In that case, the claimant obtained a late adjournment of the final hearing in her claim on medical grounds. It transpired that she had misrepresented the content of one psychiatrist's report and manually altering the date on another. An Employment Judge struck out her claim, reasoning that by showing herself willing to tamper with evidence and mislead the tribunal, the Claimant had acted unreasonably and put the possibility of a fair trial in doubt by undermining the ability of the tribunal to have trust in her veracity in a case that would ultimately depend heavily on her own evidence. Laing J held at §33:
- '...when one considers the facts as carefully set out by the EJ, it is absolutely clear that the Claimant's conduct had been such that a fair trial was no longer possible. The EJ referred in terms to the fact that the Claimant's conduct had fatally undermined the trust that the Tribunal could have in her veracity. For those reasons, it seems to me that the EJ's conclusion that the appropriate course was to strike out the claim was one that was plainly open to her, and indeed it seems to me that it was on the facts the right decision. I therefore dismiss this appeal.'**
47. In *Emuemukoro v Croma Vigilant (Scotland) Ltd* [2022] ICR 327, Choudhury P at §19 rejected the proposition that the power to strike out could only be triggered where a fair trial is rendered "*impossible in an absolute sense*". Citing *Arrow Nominees*, he held that factors that are relevant to a fair trial include "*the undue expenditure of time and money; the demands of other litigants; and the finite resources of the court*" and not simply the feasibility of conducting a trial.
48. Mr Burns KC also drew my attention to *Xie v e'quipe Japan Ltd* [2025] ICR 417, a recent case concerning a claim struck out as having no reasonable prospect of success. In that judgment at §4, Judge James Tayler emphasised that strike out is a draconian step to be taken only in clear cut case, that there is a public interest in discrimination cases being heard on the merits and that care should be taken when an application to strike out is made against a litigation in person. I accept that due weight should be given to these considerations when determining strike out applications under any limb of rule 38, not solely in relation to prospects of success.

Conclusions

49. The first question I have considered is whether any of the criteria for strike-out under the subparagraphs of rule 38(1) relied upon in the Respondent's strike-out application are satisfied.
- 49.1. Limb (a) concerns whether the claim itself is scandalous or vexatious or has no reasonable prospect of success. This claim is predicated on the

Claimant having a full-time, singular employment relationship with the Respondent. The complaints of discrimination include allegations about her working hours, workload and pay. On the evidence I have seen, I accept on the balance of probabilities that the Claimant was simultaneously working for StatPro during the time period over which the events giving rise to her claim took place. I accept the Respondent's submission that in the circumstances it would be fair to characterise the claim itself as scandalous or vexatious. I am not in a position to assess whether on all the available evidence, the allegations of discrimination would have *no* reasonable prospect of success although as I will go on to touch upon, the Claimant would have an uphill struggle to establish that her witness and documentary evidence is credible and reliable.

- 49.2. Limb (b) concerns whether the manner in which the proceedings have been conducted the Claimant has been scandalous, unreasonable or vexatious. I accept that the Claimant's conduct of proceedings has been scandalous, unreasonable and vexatious in two respects. The first is that the letter of 20 January 2025 makes assertions which, on the basis of the evidence presented at this preliminary hearing, I do not believe to be true. Namely, I find on the balance of probabilities that contrary to the Claimant's assertions in that letter, she did engage in dual employment, she is not a qualified barrister, and she did falsify two letters ostensibly sent by her maternity hospital. The second aspect is that the Claimant sent two medical letters in support of adjournment applications which I conclude on the balance of probabilities, having seen the 1 October 2025 email from the Priory, to have been forged. This conduct amply meets the test in rule 38(1)(b).
- 49.3. Limb (c) concerns whether there has been non-compliance with a Tribunal order. I consider there was only partial compliance with the order for information and disclosure on 2 April 2025. The Claimant did not provide her address or disclose her bank statements. Nor did she disclose emails which I have seen in the bundle as the result of the third-party disclosure order, which would have fallen within the scope of documents the Claimant was ordered to disclose. This was a crucial order, as the Claimant knew that the issue of dual employment would be considered at the next preliminary hearing, and it was essential that she provide the evidence relevant to that issue.
50. Having established that there are grounds that would satisfy one or more of the limbs of rule 38(1), I must go on to consider whether a fair trial is still possible – this is also limb (e) of rule 38(1). I have reached the conclusion that a fair trial is no longer possible, for the following reasons:
- 50.1. The Claimant's discrimination claims give rise to contested issues of fact regarding her treatment while working for the Respondent. The Tribunal will need to be able to assess the relative credibility of the parties' narrative accounts in order to reach a conclusion on those disputes. The Claimant's credibility has been severely compromised by my finding that she worked for two employers simultaneously and has since made representations to the Tribunal about that situation which I have concluded were untrue.

- 50.2. There is a further problem in that the Claimant's claim for disability discrimination will rely on medical evidence to establish both her disability status and the relevant context in which she alleges that the Respondent set her up to fail by manipulating her working hours and workload for discriminatory reasons. I have found on the balance of probabilities that two letters ostensibly sent by Kingston Private Health and two letters ostensibly sent by a Consultant Psychiatrist at the Priory were forgeries. I rely on the emails sent by these two organisations to the Respondent confirming that they had not in fact sent the letters in question. I reject the Claimant's explanation that the Kingston Private Health letters were sent by a midwife with a specialism in mental health, as this would not be consistent with the content of the C-section letter. I am not in a position to make a finding on the balance of probabilities that any other specific medical letter provided by the Claimant is not genuine. However, my conclusion in relation to the four falsified letters and the features of concern I have noted above in relation to other letters, create a significant issue for any Tribunal conducting a final hearing in the Claimant's case. The medical evidence, which will be a central plank of the case, cannot be taken at face value. Even the Respondent's Occupational Health reports are affected because they in turn relied on medical evidence supplied by the Claimant. It will be extremely difficult for any Tribunal conducting a final hearing to establish what documentary evidence is reliable.
- 50.3. The ability to conduct a fair trial has to be assessed in wider sense discussed in *Arrow Nominees, Masood v Zahoor* and *Emuemukoro*. The situation with the Claimant's dual employment and associated issues has already required an additional preliminary hearing for case management in March, the adjourned 2-day public preliminary hearing in June, and this 2-day preliminary hearing as well as substantial quantities of correspondence. On the conclusions I have reached based on the evidence I have seen, the need for this additional time and resource has been occasioned by the Claimant's own dishonest conduct. I take into account the finite resources of Tribunal, the pressure on Tribunal lists at the moment and the legitimate interests of other litigants in accessing finite Tribunal resources, as well as costs to the Respondent. These are factors which tend to suggest that allowing the litigation to proceed would result in unfairness. Even if it were feasible to disentangle the unreliable documentary evidence from the reliable, and to proceed to hear the Claimant's evidence taking into account the matters giving rise to doubts about her credibility, I do not consider it would be a *fair* trial looking at all the relevant circumstances in the round.
51. Having decided there are grounds to strike out and that a fair trial is no longer possible, I must go on to consider, separately, whether striking out the Claimant's entire claim would be a proportionate response in the circumstances? This includes having regard to the draconian consequences of a strike out order. I take into account the following factors:
- 51.1. The Claimant is an unrepresented litigant.
- 51.2. While the medical evidence before me is not entirely reliable, I do accept that the Claimant does have physical and mental health conditions and

from the tone of her correspondence I understand that she is a vulnerable person.

- 51.3. Fairness to the Respondent is a factor I have considered in relation to the question of whether a fair trial is possible and is also relevant to proportionality. I take into account the time, expense and stress that would be occasioned to the Respondent and its witnesses should the litigation proceed.
- 51.4. Whether a less draconian alternative step could be taken. In relation to this factor, I consider that if it were solely a case of non-compliance with a Tribunal order, further time and an unless order to achieve compliance might be an alternative way forward. However, the Claimant's dual employment situation goes to the heart of the discrimination claim she has presented. Her conduct of proceedings since has been towards the more serious end of the scale of scandalous, unreasonable and vexatious behaviour seen in the Employment Tribunal. In the circumstances, I cannot see that the situation is retrievable by taking any other procedural step short of strike out.
- 51.5. Whether the Claimant by her conduct has forfeited her right to have her claims determined on the merits. The conduct in this case is unusual, and fortunately such situations are rare. I have concluded that the circumstances in which the Tribunal has been asked to determine the strike-out application are of the Claimant's own making and that she has used the Tribunal process dishonestly and abusively.
52. I am fully aware of the exceptional and draconian nature of the order I have been asked to make but conclude it is the fair and appropriate step to take in all the circumstances. The Claimant's claim is therefore struck out in its entirety.
53. If the Claimant wishes to apply for reconsideration of this judgment, any such application should be submitted to the Tribunal within 14 days of the date this judgment is sent to the parties. The relevant provisions are at rules 68 to 70 of the Employment Tribunal Rules of Procedure 2024.¹

Employment Judge Barrett
Dated: 31 October 2025

¹ <https://www.legislation.gov.uk/uksi/2024/1155/made>