



EMPLOYMENT TRIBUNALS

Claimant: Ms Gould

Respondent: Royal Academy of Music

Heard at: London Central (in person)

On: 26 November 2025

Before: Employment Judge E Burns (sitting alone)

Representatives

For the Claimant: Did not attend

For the Respondent: Jonathan Cook, Counsel

WRITTEN REASONS

INTRODUCTION

1. I have prepared these written reasons on my own initiative following giving judgment in this case striking out the claim. I heard the strike out application in the absence of the Claimant and her representative. I have therefore prepared these reasons so that they understand why the claim was struck out and can apply for a reconsideration of the decision if they wish.

THE HEARING

2. The hearing was listed as a final hearing in person. The Respondent's solicitors had prepared a bundle for the final hearing and witness statements for its four witnesses. It had also prepared a smaller bundle of emails to support a written application it made to strike the claim out on 12 November 2025.
3. Neither the Claimant nor her representative, Tim Tyndall, solicitor, attended the hearing. I asked my clerk to try and contact the Claimant's solicitor by phone to find out if there was a reason for their absence. The clerk reported back that she was unable to reach him, having tried his direct line and his firm's switchboard, but she had left a message for him. I then asked her to try phoning the Claimant. Initially the clerk told me that the tribunal did not have contact details for the Claimant, but she was later able to find these and rang the Claimant.

4. Before I was aware that the clerk had reached the Claimant, I instructed her to email the Claimant's solicitor and enquire why he was not at the hearing. In fact, he rang her back before she sent the email, but I instructed her to send it anyway.
5. The Claimant's solicitor's email, sent at 10:51 said the following:

"I refer to the telephone calls received this morning and my conversation with [the clerk] just now. I apologise that in error the hearing listed today had been misregistered in my dairy (sic) for January 2026.

In addition, the claimant is unwell and not in a position to provide full instructions. I would attend directly but regrettably am involved in an internal hearing and am unable to travel in time to attend at the tribunal today.

Given the circumstances the claimant may have to seek alternative representation and I therefore respectfully request that the matter is adjourned today."
6. When the clerk provided me with a copy of the email, she informed me that she had spoken to the Claimant twice. In the first call she told the clerk that she was unaware that the hearing was taking place and would try and speak to her solicitor. She then called back to say she understood her solicitor would try and get to the hearing. The Claimant did not tell the clerk that she was unwell or that she thought the hearing was in January, although I note that she was not asked these things.
7. I was aware that under Rule 47 of the Tribunal Rules of Procedure 2024, I could dismiss the claim in the event of non-attendance of the Claimant and her representative. I decided not to do this, but to proceed with the hearing and allow Mr Cook to make submissions on the Claimant's application to postpone the hearing and subject to my decision on that, to allow Mr Cook to make the Respondent's strike out application.
8. Having decided not to postpone the hearing, at least until after hearing the strike out application, I heard the strike out application and granted it. I gave oral reasons for my decisions. I informed Mr Cook that I would prepare written reasons and highlight in them the ability to apply for reconsideration.
9. Mr Cook indicated that the Respondent was considering making an application for costs and/or wasted costs, but anticipated that such an application would need to be considered at a different time. I confirmed that was indeed the case as an application for costs needs to be made on notice to comply with the requirements in Rule 75(2).
10. After the hearing ended, my clerk alerted me to the fact that she had sent the Claimant's solicitor's email to the Claimant who had replied expressing shock. In her email she also requested an adjournment. I did not see this email until after I had made my decisions.

RELEVANT BACKGROUND

11. I did not hear any witness evidence, but had access to the documents contained in the bundles prepared by the Respondent's solicitors and the email referred to above. The clerk also summarised the telephone conversations set out above in the public hearing so that everyone present had the same information.
12. The final hearing was listed at the case management hearing that took place in this case on 17 January 2025. The Claimant's solicitor was present at that hearing. The hearing dates of 26 – 28 November 2025 are clearly set out in the case management order from that hearing which was sent to him on 22 January 2025.
13. The reason there had been a case management hearing was because the Claimant's claim had originally included an unparticularised claim for age discrimination. This meant that it was treated as an open track case and a case management hearing was listed automatically. As it transpired, when the case management hearing took place, that claim was not pursued leaving only an ordinary unfair dismissal claim.
14. A notice of hearing was also sent to the Claimant's solicitor on 20 January 2025. There is a typo in the dates given on the document as it refers to "26 November 2025, 27 November 2025 and 28 November 2028." I do not consider the typo to be material.
15. The Claimant has only complied with one of the case management orders made at the case management hearing. That was the order to provide further and better particulars at paragraph 4.
16. The Claimant has not provided a schedule of loss (due on 24 January 2025) or any disclosure (due 5 September 2025). There has been no engagement by the Claimant in relation to agreement on the bundle contents (due to be agreed by 26 September 2025). The Claimant has not sent the Respondent's solicitors a witness statement (due to be exchanged on 24 October 2025).
17. The Respondent's solicitors wrote to the Claimant's solicitor asking if he was in a position to provide disclosure on 5 September 2025. He did not reply. On 10 September 2025, having tried and failed to speak to the Claimant's solicitor, the Respondent's solicitors provided a link to its disclosure to the Claimant's solicitor by email. A chaser was sent on 16 September 2025. The Respondent's solicitors also tried again to contact the Claimant's solicitor by telephone.
18. On 30 September 2025, the Respondent's solicitors wrote to the Claimant's solicitor to ask if he was still instructed to act for the Claimant, as he had failed to respond to recent emails. The dates of the final hearing were in the subject line the main body of the email. The email suggested a timetable for compliance with the case management orders. The letter also advised the Claimant's solicitor that the Respondent would incur 50% of its brief fee for counsel on 18 November 2025.

19. The Claimant's solicitor replied on 2 October 2025 to confirm that he remained instructed and that he would provide the documentation in the timetable requested. This was the last communication received by the Respondent's solicitors.
20. The Respondent's solicitors wrote to the Claimant's solicitor again on 7, 8 and 17 October. All of those emails had the hearing dates in the subject line. On 10 November 2025 a further email was sent, warning the Claimant that an application to strike out would be made if no response was received by 12 November 2025. This email did not have the hearing dates in the subject line, but said within it that the hearing was due to begin in just over two weeks' time.
21. On 12 November 2025, the Respondent's solicitors applied to the tribunal for the claim to be struck out. The Claimant's solicitor was copied in to the email. The Respondent's solicitors had by this date sent the Claimant's solicitor the Respondent's disclosure and prepared a final hearing bundle.
22. On 18 November 2025, the Respondent's solicitors emailed the Claimant's solicitor attaching its password protected witness statements. The email confirmed that they would share the password once it received the Claimant's witness statement. The email confirmed that the Respondent would be reserving its position in relation to costs.

DECISION ON POSTPONEMENT

Claimant's Application to Postpone and Respondent's Response

23. I treated the contents of the Claimant's solicitor's email as an application to postponement made on the basis that he had made a mistake over the hearing date and the Claimant was too unwell to give instructions.
24. On behalf of the Respondent, Mr Cook submitted that, in light of the recent correspondence between the Respondent's solicitors and the Claimant's solicitor, the explanation given by the Claimant's solicitor about failing to register the dates of the hearing lacked credibility. He also made the point that the application for postponement on the grounds of the Claimant being unwell was not supported by medical evidence.

Legal principles

25. The power to postpone a hearing is part of the general case management powers of a Tribunal found in Rule 30 of the Employment Tribunal Procedure Rules 2024.
26. There is a rule in the Employment Tribunal Procedure Rules that deals specifically with postponements (Rule 32). It says that applications for postponement must be made as soon as possible. The remaining provisions in Rule 32 only apply where the Tribunal has already ordered two or more earlier postponements upon application by the same party and that party makes a late application for a third postponement. Here, there had been

only one earlier postponement, granted upon the Respondent's application and the rest of the rule was therefore not applicable.

27. When considering an application to postpone, the Tribunal must consider the Overriding Objective found in Rule 3. There is also presidential guidance, which although not binding is guidance to which the Tribunal should have regard. The Tribunal has a broad discretion in relation to applications for postponement

Decision

28. I decided not to postpone the hearing, at least until after I had heard the Respondent's application for strike out.
29. The overriding objective requires the Tribunal to avoid delay, although only so far as compatible with proper consideration of the issues. There is a need to deal with matters of this nature fairly and justly taking into account the positions of both parties.
30. I agreed with Mr Cook that the explanation given by the Claimant's solicitor for not attending the hearing lacked credibility. He had not only been present when the hearing was listed, but had been reminded in very recent correspondence from the Respondent's solicitors of the hearing date on several occasions. His reply on 2 October 2025 demonstrated that he had received and read these emails.
31. I also noted that the application was not supported by medical evidence confirming the Claimant was unwell. This aspect of his email appeared to be contradicted by the information that the clerk supplied having spoken to her.
32. As the Claimant's solicitor was not present at the hearing and had no opportunity to respond, I did not feel I could go further and make any actual findings about his conduct. However, my reason for refusing the application took into account that if the Claimant's solicitor's explanation about the calendar mix-up was genuine, it would be likely that the Claimant would have a cause of action against him and his firm for professional negligence. In my judgment, this mitigated the prejudice to her.
33. In contrast, the Respondent had fully prepared for the hearing, including making a strike out application and incurring its full brief fee. I considered the prejudice to the Respondent of not proceeding was significant, particularly when, in light of the failure to comply with the case management orders meant there appeared to be no certainty that delaying the hearing would lead to an effective hearing in the future.
34. The Respondent's solicitors had warned the Claimant's solicitor about the strike out warning, and a possible costs application in the correspondence. If he was unable to obtain the Claimant's instructions on these matters due to her being unwell, he could have and should have made this known to the Respondent's solicitors and to the Tribunal at the earliest possible opportunity. If instead, he simply failed to deal with these things, again, it

would be likely that the Claimant would have a cause of action against him and his firm for professional negligence.

35. Taking all of the above into account, I decided that the prejudice to the Respondent of not proceeding outweighed the prejudice to the Claimant.

DECISION ON STRIKE OUT

Respondent's Application and Claimant's Response

36. The Respondent's solicitors' application was made in writing on 12 November 2025 and copied to the Claimant's solicitor. It was made under Rule 38(1)(c) and Rule 38(1)(d). Mr Cook made oral submissions in support of the application.
37. I note that the application was copied to the Claimant's solicitor, but he did not reply to it or send the Tribunal any response to it.

Legal Principles

38. The Tribunal's power to strike a claim out is found in Rule 38. It says:
- "(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 (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)."*
39. There are three elements to consider when deciding whether a claim should be struck out under Rule 38(1)(c) and (d). The Overriding Objective in Rule 3 is also relevant.
40. The Tribunal must first consider whether the condition in the Rule is met, i.e. has there been non compliance with any Rules or orders and/or has the claim not been actively pursued.
41. The principle that breaches committed by a representative in the name of a party are normally treated as having been done by that party applies.

42. If a condition in the Rules is established, strike out does not automatically follow. The Tribunal also has to consider whether, notwithstanding the relevant conduct, a fair trial is still possible. The Tribunal must also consider whether strike out is a proportionate sanction in the circumstances or whether a lesser sanction should be
43. It has long been understood that, in certain exceptional circumstances, a claim may be struck out without the tribunal needing to investigate if a fair trial is still possible. The exceptional circumstances are said to arise where there has been 'wilful, deliberate or contumelious disobedience' or 'persistent wilful disobedience' of a tribunal order (*De Keyser Ltd v Wilson* [2001] IRLR 324, EAT, *Blockbuster Entertainment Ltd v James* [2006] EWCA Civ 684, [2006] IRLR 630. Although the more recent EAT decision in *Forrest v Amazon Web Services EMEA SARL UK Branch* [2025] EAT 81, [2025] IRLR 656 suggests this may not correct and that the question of whether a fair trial is possible ought always to be considered.
44. In *Emuemukoro v Croma Vigilant (Scotland) Ltd* [2022] ICR 327, the EAT, confirmed that the Tribunal's power to strike a case out does not only arise where a fair trial is rendered impossible in an absolute sense. This was because such an approach would not take account of factors such as undue expenditure of time and money; the demands of other litigants; and the finite resources of the justice system which are consistent with taking into account the overriding objective. Specifically, it was said that:
- "It would almost always be possible to have a trial of the issues if enough time and resources are thrown at it and if scant regard were paid to the consequences of delay and costs for the other parties. However, it would clearly be inconsistent with the notion of fairness generally, and the overriding objective, if the fairness question had to be considered without regard to such matters."* (paragraph 19)
45. The EAT confirmed that where it was not possible for a fair trial to take place in the listed trial window, this was sufficient to trigger the power to strike out, subject to proportionality.
46. When considering the question of proportionality potential alternatives to strike might include postponement, potentially accompanied by costs or wasted costs orders and/or unless orders.

Decision

47. I decided to strike the claim out under Rule 38(1)(c) and in addition and/or in the alternative Rule 38(1)(d).
48. The reason for my decision was because there had been an almost complete failure by the Claimant to comply with any of the case management orders, such that we had arrived at the final hearing with nothing by way of disclosure or witness evidence from the Claimant including a failure to attend.

49. Mr Cook invited me to find that the failure to comply with the orders was wilful, deliberate and persistent. It was certainly persistent in my judgment, but without having the Claimant's solicitor present, I did not consider I was able to make any stronger finding. I was satisfied that there was a failure to actively pursue the case.
50. I considered if a fair trial was possible and in conjunction with whether strike out was the proportionate sanction in the circumstances.
51. The absence of any preparatory work having been carried out by the Claimant meant that it was not possible to have a fair trial in the available trial window. I was aware that an option that was open to me was to proceed with the hearing in the Claimant's absence as the Respondent was fully prepared. Such a trial would not have offered the Claimant an opportunity to challenge the Respondent's evidence or present her own evidence and therefore would not have met the requirement for the parties to be on an equal footing, albeit that I would have approached it fairly.
52. One option open to me was to postpone the hearing to enable the Claimant to instruct a new representative and have time to remedy the preparatory defects. I rejected this option in part, because I was not at all convinced that this would avoid the same situation arising yet again.
53. My other reasons were to avoid any further undue expenditure of time and money by the Respondent and taking into account the finite resources of the justice system and the interests of other litigants.
54. Although the Respondent had already prepared for the hearing, a postponement would have resulted in it incurring additional expenditure. An additional brief fee for counsel would have been incurred, but that would not have been all. It would also likely be necessary for it to consider any additional documents disclosed by the Claimant resulting in a need to revisit its witness evidence. The Claimant would also have the advantage of the Respondent having already produced its witness evidence, although I note she could have been ordered not to read the witness evidence.
55. I was aware that I could order the Claimant to pay these additional costs, but I had no information about whether the Claimant could afford this, or whether the Claimant's solicitor's firm would cover these costs.
56. The hearing would not have been able to be relisted for over a year and would have resulted in taking a hearing slot away from other litigants. The Claimant was dismissed on 2 February 2024 in relation to matters that had arisen in August, September and October 2023. A postponement would have meant a delay in the region of three years between those events and the final hearing. In addition, my judgment it appeared that there had already been an unnecessary case management hearing and a wasted day of tribunal time due to the Claimant's non-attendance.

57. I also considered an unless order, but was unable to envisage how such an order could be drafted and what difference making such an order would make.
58. Taking all of the above into account, and, in particular, the clear disregard for the Tribunal's orders I decided to proceed with the strike out.
59. As referred to above, I have prepared these written reasons so that the Claimant and the Claimant's solicitor are aware of the reasons for my decision and can apply for reconsideration. Such an application must be made in writing within 14 days of the dates these reasons are sent to them (see Rule 69).
60. I also repeat my comments above about the likelihood of the Claimant having a cause of action against the Claimant's solicitor and his firm. If this is the case, I consider it is in the interests of justice for this route to be pursued by her, rather than for any additional tribunal resources to be allocated.

Approved by:

Employment Judge E Burns

1 December 2025

REASONS SENT TO THE PARTIES ON

4 December 2025

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FOR THE TRIBUNAL OFFICE

Notes

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

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

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