



EMPLOYMENT TRIBUNALS

Claimant: Ms M Henry

Respondent: Bury Metropolitan Borough Council

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

Before: Employment Judge Hill (sitting alone)

Representation

Claimant: In person

Respondent: Mr Thomas Wood (counsel)

PRELIMINARY HEARING IN PUBLIC JUDGMENT

1. The Tribunal has considered the Respondent's applications under Rules 38 and 40 of the Employment Tribunals Rules of Procedure. Both applications are dismissed.
 - a. The application to strike out the claim under Rule 38 is refused.
 - b. The application for a deposit order under Rule 40 is also refused.

2. Legal Framework

3. **Rule 38** permits a Tribunal to strike out all or part of a claim or response at any stage if it is scandalous, vexatious, or has no reasonable prospect of success (Rule 38(1)(a)).
4. **Rule 40** allows the Tribunal, at a preliminary hearing, to order a party to pay a deposit (up to £1,000) if any specific allegation or argument is considered to have little reasonable prospect of success.

5. Strike Out Application

6. In so far as the strike out application is made out the Respondent relies upon the claim having no reasonable prospect of success.
6. The Tribunal finds that the respondent has failed to demonstrate that the claim has no reasonable prospect of success. The Claimant has set out 11 allegations/events where she alleges that she was discriminated against on

the grounds of her race. She has provided either a hypothetical compactor or actual comparator for each allegation and has stated that she was treated less favourably than her comparator on the grounds of her race.

7. The Tribunal accepts that it is not enough to say that "I was treated differently than my white colleagues." And the Claimant must show she was treated worse than her white colleagues, and the reason was because of her race. The claimant has provided 11 events/allegations where she describes situations where she asserts, she was spoken to disrespectfully, spoken down to, not taken seriously, invited complaints about the claimant, not following protocols to the detriment of the claimant and failed to follow procedures and provide her with relevant information during her grievance procedure. The claimant alleges that these all amount to less favourable treatment and that either her actual or hypothetical comparators would not have been treated in the same way.
8. The Tribunal does not agree with the Respondent that the Claimant has not been able to show anything more than a difference of treatment and that the claimant's allegations if proven amount to potential less favourable treatment. The Tribunal finds that in order to determine whether the allegations/events occurred and whether they amounted to less favourable treatment requires a full hearing where evidence can be heard on the merits of each allegation.
9. When considering whether to strike out claims, particularly those involving discrimination, the following approach is taken:
 1. Only in the clearest cases should a discrimination claim be struck out.
 2. Where there are core issues of fact that depend, even in part, on oral evidence, those should not be decided without hearing that evidence.
 3. The Claimant's case is generally to be considered at its highest.
 4. the Claimant's case is "conclusively disproved by" or "totally and inexplicably inconsistent" with undisputed contemporaneous documents, it may be struck out.
 5. The Tribunal should not conduct an impromptu mini trial of oral evidence to resolve core disputed facts (see *Mechkarov v Citibank NA* [2016] ICR 1121 at [14]).
9. Nonetheless, tribunals should not be deterred from striking out claims or making deposit orders, including in discrimination cases that involve factual disputes, if it is clear that there is no or little reasonable prospect of the necessary facts being established. However, care must be taken, especially where full evidence has not yet been heard, and particularly in discrimination contexts. Whether the required test is met in any case is a matter of judgment (see *Ahir v British Airways plc* [2017] EWCA Civ 1392 at [16]).

Deposit Order Application

10. The threshold for a deposit order is lower than for strike out: the Tribunal must be satisfied that the claim has little prospect of success.
11. For the reasons outlined above, the Tribunal does not consider a deposit order appropriate in this case.

12. Time Limits

13. The Tribunal notes that there may be issues regarding time limits, which will be addressed at the final hearing.

Approved by:

Employment Judge Hill

30 October 2025

JUDGMENT SENT TO THE PARTIES
ON 12 December 2025

.....
FOR THE TRIBUNAL OFFICE

Notes

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

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

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

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