EMPLOYMENT TRIBUNALS

Claimant: Mrs L Oyebisi

Respondent: Hyde Housing Association Limited

Heard at: Croydon (by CVP) **On:** 6 and 7 November 2025

Before: Employment Judge Lumby

REPRESENTATION:

Claimant: Mr T Emezie (solicitor)
Respondent: Mr J Cook (counsel)

PRELIMINARY HEARING IN PUBLIC JUDGMENT

The judgment of the Tribunal is as follows:

Strike out of claim

1. By consent, all complaints in case number 2306525/2020 except for the complaint of automatically unfair dismissal are struck out under Employment Tribunal Rule 38(1)(a) as they have no reasonable prospect of success, being duplicates of the complaints in case number 2305977/2025.

2. The claims in case numbers 2305977/2020 and 2306525/2020 are struck out

    a. under Employment Tribunal Rule 38(1)(b) because the manner in which the proceedings have been conducted has been unreasonable.
    b. under Employment Tribunal Rule 38(1)(c) because of non-compliance with an order of the Tribunal.
    c. under Employment Tribunal Rule 38(1)(e) because it is no longer possible to have a fair hearing in respect of them.

Costs order

3. The claimant's application for reconsideration of the judgment of the costs order made on 5th June 2023 is refused.

REASONS

Introduction

1. The claimant brought two claims in September and October 2020. I set out more details of its history below but for various reasons there is still no clarity on the exact claims. The cases were struck out in October 2021 but that decision was overturned by the EAT on appeal and the cases remitted to the Tribunal. A case management hearing in October 2024 made little progress on the issues and the claimant was given the opportunity to clarify her claims.

2. The judge conducting the October 2024 hearing set a two day public preliminary hearing for 28 and 29 April 2025 to consider:

    a. clarification of the issues;
    b. case management for the next hearing;
    c. any application for strike out by the respondent

3. That hearing was subsequently postponed and rearranged to 6 and 7 November 2025. I reserved judgment at that hearing and this judgment contains my decision on the matters discussed and the reasons for them.

4. The hearing was attended by Mr Emezie as the claimant's representative as well as on the first day the claimant herself. Mr Cook represented the respondent, together with Ms Annie Drew from the respondent's solicitors and (again on the first day) Ms Linda Dodd from the respondent.

5. Both the claimant and Ms Dodd provided witness statements. Mr Emezie objected to Ms Dodd's witness statement being allowed as there was not specific provision for it in the case management order from the October 2024 hearing. The witness statement covered the respondent's contact with its witnesses for a final hearing and I considered this useful in considering whether a fair trial was still possible. The claimant had had the statement since early this year and I could not see any prejudice to the claimant in accepting it. I therefore decided it was in the interest of justice and in accordance with the overriding objective to allow Ms Dodd's witness

statement to be considered. As a result, both the claimant and Ms Dodd gave evidence.

6. I was provided with a bundle running to 781 pages, speaking notes from Mr Emezie and a file note from an interim relief hearing in 2021. I did not read the entire bundle but viewed documents to which I was directed.

7. Most of the hearing was spent considering a new strike out application brought by the respondent. We also considered a request from the claimant that a costs order against her be reconsidered. This request was refused and oral reasons given at the time. The claimant has subsequently requested written reasons for that decision and I have these out later in this judgment.

8. We also discussed whether the claimant would consider limiting her claim to a small number of the most important events or treatments. Mr Emezie obtained confirmation that the claimant agreed to this approach. I agreed to delay preparing my decision on strike out to allow any proposals to that effect to be presented. By a letter dated 13 November 2025, her representatives (Chipasto LLP) confirmed "that the Claimant's case will be limited to the following claims:

   Direct and indirect race discrimination
   Harassment related to race and sex
   Victimisation
   Sexual assaults
   Unlawful deductions/arrears of pay (including notice and holiday pay); and
   Automatic unfair dismissal."

   The letter contained no specific proposals for limiting the number of events or treatments to be relied on nor did it specify any.

   I will return to this letter later in this judgment.

Background

9. The claimant has brought two claims, the first on 28 September 2020 which is claim number 2305977/2020 ("the first claim") and the second on 15 October 2020 under claim number 2306525/2020 ("the second claim"). The claims appear to be for race and sex harassment, whistleblowing detriment and automatically unfair dismissal. However, the claim forms are lengthy, and the exact allegations and issues are not clear.

10. The Grounds of Claim attached to the first claim runs to approximately 45 pages. It was noted in a previous hearing that it appears to contain several separate documents which have been merged together, there is a repeat of paragraph numbers throughout. The first claim contains a very large number of allegations, but it is difficult to ascertain the factual and legal allegations.

11. At the time of submission of the ET1 for the two claims, and in the previous preliminary hearings prior to October 2024, the claimant was represented by Howard Ogbonmwan. It is understood that Mr. Ogbonmwan was a lay representative, and not legally qualified.

12. The second claim did not have an attachment submitted with it, and the ET1 provides little detail. The ET1 was considered an application for interim relief, and a hearing took place to consider the interim relief application before Employment Judge Andrews on 6 January 2021. Employment Judge Andrews dismissed the application for interim relief and gave reasons orally at the hearing.

13. On 7 April 2021 the Claimant filed a document called "further and better particulars". This document runs to approximately 50 pages, single spaced in a small size font. This did not clarify matters.

14. A case management preliminary hearing was conducted by Employment Judge Truscott KC on 9 April 2021. At that hearing it was ordered that a public preliminary hearing take place to consider:

    a. *Whether the Tribunal has jurisdiction to entertain the Claimant's second claim, alternatively whether it ought to be struck out because it has no reasonable prospect of success.*
    b. *Whether the ET3 for the Respondent should be struck out.*
    c. *To address any application to amend the ET1 by the Claimant*
    d. *To identify the issues for the main hearing, and*
    e. *List the main hearing and make any further case management orders.*

15. Employment Judge Wright conducted that public preliminary hearing on 7 and 8 October 2021. It is recorded that an attempt was made to clarify the issues, but that the claimant's former representative would not engage. At the hearing Employment Judge Wright struck out the claims on the basis that the manner in which the proceedings had been conducted was scandalous, unreasonable or

vexatious and there had been non-compliance with a Tribunal Order. The application and the decision centred around the behaviour of Mr Ogbonmwan.

16. A costs hearing took place in front of Employment Judge Wright on 5 June 2023. The claimant was ordered to pay the respondent £20,000. The respondent did not appeal that decision or ask for reconsideration within the permitted 14 day time period.

17. At a hearing in the Employment Appeal Tribunal on 16 July 2024 the claimant successfully appealed the decision to strike out the claims. The Employment Appeal Tribunal remitted the matter back to the Employment Tribunal to be considered by a different judge. The basis on which the appeal succeeded was essentially procedural, that the claimant was given insufficient notice of the strike out application.

18. The claimant subsequently obtained new representation, instructing Mr Emezie in place of Mr Ogbonmwan.

19. A further preliminary hearing took place on 4 October 2024 before Employment Judge Cawthray, with the purpose of that hearing being to discuss next steps. In essence, the tribunal was back to where things were at the preliminary hearing in October 2021.

20. At that hearing little progress was made in clarifying the issues. Mr. Emezie asked that the claimant should be given the opportunity to clarify her claim now that she has appointed legal representation. There was some discussion as to how long was required for the final hearing. The respondent had postulated a period up to 20 days, Mr Emezie said that when clarified he thinks the final hearing will need 5 days, but that even as drafted it would take 10. The claimant was given until 15 November 2024 to submit a further and better particulars of claim, the case management order stating:

    This document is intended to give the Claimant a chance to clarify her claim – both factually and legally. The document must refer in square brackets, to the paragraph number, the page number and the first three words of each sentence. This is necessary due to the confusing format of the Particulars of Claim for the first claim, which duplicates paragraph numbers and seems to merge several documents

    An amended document was subsequently submitted but this did little more than make numbering and grammatical changes.

21. The case management orders also required the claimant by the same date to make any application she wanted to make in relation to the costs order made on 5 June 2023. The claimant subsequently applied on 15 November 2024 for reconsideration of this order. This was considered by Employment Judge Wright on 10 December 2024, who refused the application, stating that

    "The claimant's application of the 15/11/2024 to 'revoke' the costs order of the 5/6/2023 is refused. The claimant does not cite any basis in the Rules for its application.

    The costs order dealt with conduct other than that which lead to the claim being struck out (overturned on appeal).

    In any event, the application is out of time."

22. The claimant asked for written reasons for this decision but these were contained in the letter of 10 December 2024. She later made a further application for reconsideration; the tribunal responded on 14 January 2025 as follows:

    "The claimant's email of the 11/12/2024 and the respondent's email of the 13/12/2024 have been referred to Employment Judge Wright. Both emails refer to the claimant's application of the 15/11/2024 to 'revoke' the costs Order made on 5/6/2023, the outcome of which was notified to the parties on the 10/12/2024.

    Notwithstanding that the previous decision was in effect a reconsideration of the costs Order previously made; the claimant's latest application is refused as there is no prospect of the Order being varied or revoked."

23. This application was revived again by the claimant and considered by me and rejected by me in an oral judgment at the hearing. Written reasons for my decision are given later in this judgment.

24. The respondent was required to make any new strike out application it wished to make by 13 December 2024. This was received and was considered at the hearing before me. My decision on that application and my reasons for it are set out below.

25. As referred to above, a two day public preliminary hearing was listed to consider the issues in the case, set the timetable going forward and to consider the strike

out applications. This was initially listed for 28 and 29 April 2025 but subsequently moved to 6 and 7 November 2025.

Strike out application

26. The respondent made its strike out application on 13 December 2024. The claimant filed a response and provided speaking notes at the hearing. Both parties made submissions at the hearing, having had the opportunity to examine both witnesses. I am satisfied that a fair process for making and considering the application was followed.

27. The application is essentially in two parts, an application to strike out both cases in their entirety and secondly an application to strike out the second claim apart from the claim for automatically unfair dismissal.

28. The claimant opposed the first claim but agreed that the second claim was, other than the claim for automatically unfair dismissal, a duplication of the first claim. It was therefore agreed that the second claim should be struck out apart from the claim for automatically unfair dismissal.

29. The respondent applies for both claims to be struck out pursuant to Rules 38(1)(b), (c) and (e) of the Employment Tribunal Procedure Rules 2024 (the "Rules"). These relate to (b) the conduct of the proceedings in a scandalous, unreasonable and/or vexatious manner, (c) non-compliance with an order of the tribunal and (e) that it is no longer possible to have a fair hearing. I set out a summary of the arguments advanced and the claimant's response for each element in turn.

Rule 38(1)(b)

30. The respondent set out examples of the manner in which the claimant's then representative had conducted the litigation and argued this was scandalous, unreasonable and vexatious; these led to the earlier strike out and a substantial costs order. They argued that this conduct was done in the claimant's name and the facts prevent any rebuttal to the contrary; she was copied in on much of the correspondence and was often present when her representative behaved in an unacceptable manner.

31. In addition, Mr Cook argued that the claimant's conduct continued to be unreasonable, citing the example of the further and better particulars produced after the October 2024 hearing which disregarded the clear instructions given by Employment Judge Cawthray and did nothing to clarify or streamline the claims.

32. The claimant argues that a party should not be penalised for the failings of a representative unless it renders fair trial impossible. Mr Ogbonmwan has been replaced and Mr Emezie argues that the claimant had no involvement in or knowledge of his misconduct. He points to her witness statement and evidence where she confirms she did not authorise any excessive, irrelevant or inappropriate correspondence or allegations and was not aware of the full extent of his conduct until the costs hearing in June 2023. The conduct of Mr Ogbonmwan is irrelevant following the EAT decision.

Rule 38(1)(c)

33. The respondent sets out breaches that occurred prior to the October 2021 hearing. More reliance is placed on the failure to clarify the claims pursuant to the October 2024 case management orders. Despite the predictions that following the clarifications the case would be suitable for a five day final hearing, the claimant has again failed to clarify the claims, leaving the respondent no clearer as to their scope.

34. The claimant denies there has been non-compliance and says that the further and better particulars produced after the October 2024 hearing complied with the directions given; Mr Emezie argued that this required reformatting only.

Rule 38(1)(e)

35. The respondent says that strike out on this ground applies even in cases where the party against whom strike out is sought has done nothing wrong, citing the decision in *Leeks v University College London Hospitals NHS Foundation Trust [2024] EAT 134*. Mr Cook contended that five years have already passed and a final hearing date has not been listed. He pointed to the evidence of Ms Dodd as showing that many potential witnesses had expressed concern at recollecting events that will have occurred long ago by the time the cases reach a final hearing.

36. The claimant argues that strike out in discrimination cases should be a last resort and argues that a fair trial is still possible, based on the number of respondent witnesses who have expressed a willingness to take part in a final hearing (only one has refused and one cannot be traced, out of 11 potential witnesses). They can use contemporaneous notes to remind themselves of the position. Any delay

has arisen from the respondent pursuing strike out applications and it should have obtained witness statements earlier.

Rules and law

37. I will next turn to the relevant rules and law.

38. The test for strike out is set out in rule 38 of the Rules:

> (1) The Tribunal may, on its own initiative or on the application of a party, strike out all or part of a claim or response 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 or response (or the part to be struck out).*
>
> *(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.*

39. The principles concerning strike out are well known and clear. The power to strike out is a draconian power and should not be readily exercised. Where the central facts are in dispute, only in an exceptional case will an application be struck out as having no reasonable prospect of success without a full hearing of the evidence. This is not relevant here where the application is on different grounds.

40. Where strike out is considered on conduct grounds, as is the case here, the EAT suggested a three part test in the case of *Bolch v Chipman [2024] IRLR 140* as follows:

> a. Is the relevant jurisdictional threshold in rule 38(1) satisfied?
> b. If so, is a fair trial possible?
> c. Would a lesser sanction be more appropriate?

41. Guidance of whether a fair trial is possible is provided in the case of *Emuemukoro v Croma Vigilant (Scotland) Limited [2022] ICR 327*, which Mr Cook referred to. In determining whether a fair trial is possible, the tribunal should have regard to factors such as the proportionate expenditure of time and costs, the fair allocation of limited tribunal resources and the impact of the proceedings upon other litigants.

Tribunal consideration

42. I begin my consideration by looking at the claimant's conduct.

43. Mr Emezie argued that the respondent could not bring conduct arguments in relation to Mr Ogbonmwan as this was prevented by the EAT judgment and to do so amounted to an abuse of process. I do not agree with this argument. The EAT accepted the appeal on the basis that insufficient notice was given; they did not state that strike out as a result of the conduct of Mr Ogbonmwan was rejected. I find nothing in the respondent's application that amounts to an abuse of process.

44. However, the EAT suggest in paragraph 50 of their decision that the change of representation may have an impact on the prospects of success of any argument that his conduct renders no fair hearing possible. I do agree with that suggestion. Having changed representation, the conduct of Mr Ogbonmwan itself is not a ground to strike out the cases.

45. Where that conduct may be relevant is whether it was made with the authority of the claimant. I have read her witness statement and listened to her answers when cross-examined by Mr Cook. She argued that she had no experience of litigation and so did not know what was appropriate or inappropriate behaviour. She also said that she will ill when Mr Ogbonmwan was conducting the case on her behalf; no medical evidence to support this contention was provided. I found her answers in some cases rather formulaic or evasive. She for example just stated that she had not authorised inappropriate conduct a number of times rather than engaging with the question. In addition, when asked whether she had seen an email sent in the middle of the night and to which she was copied met she repeated the response that she had seen it when sent, not answering whether she seen it later.

46. Employment Judge Wright had concluded that Mr Ogbonmwan was on a frolic of his own and I do not disagree with that conclusion. She was, of course, a contemporary and impartial witness to that behaviour at the hearing in October 2021. That supports the claimant's contention that she had not authorised his behaviour. It is surprising, however, that she has not disclosed any

communications with him discussing the conduct of the case. I conclude, on the balance of probabilities, that she did not authorise his conduct and this on its own is not sufficient to amount to scandalous, unreasonable or vexatious conduct.

47. However, I also have grave concerns about her approach to the conduct of the case. She witnessed Mr Ogbonmwan's behaviour in hearings and did nothing about it. She either read his emails and did nothing about them or failed to do and so did not engage with cases brought in her name. This approach at that time was unreasonable.

48. My primary concern is her continued failure to clarify her claim. It is her claim as she must act so as to ensure the respondent understands the case they must answer, the litigation cannot be progressed or a fair trial achieved without it. It was made clear in the first hearing with Employment Truscott KC that there were major issues in understanding her cases. Further and better particulars produced before that hearing did nothing to clarify the issues. The preliminary hearing in October 2021 made no progress on this front. This conduct has continued despite the change of representation. This was discussed at the preliminary hearing in October 2024 with Employment Judge Cawthray. The claimant was given a direction to clarify her claim both factually and legally. I have set out the direction above and it is entirely clear. Mr Emezie's argument that this was a direction to reformat the particulars is not accepted and fails in the face of his request to clarify the claims. The updated particulars have been hardly changed and are as difficult to comprehend as before. The key issue is the inability to identify what the key allegations and issues are.

49. I find this conduct unreasonable. The case cannot be progressed until the issues are clarified and the claimant has wilfully refused to do this. The fact that Mr Emezie was reported at saying at the October 2024 hearing that once clarified the claim will be suitable for a five day trial rather than a ten day trial as then presented suggests the task was able to be performed; indeed, the request was made by him so that clearly was the intention. The failure to do so emphasises this refusal to engage with the tribunal's directions and enable the case to progress. As such, I find it meets the jurisdictional threshold for unreasonable conduct for the purposes of Rule 38(1)(b).

50. This conduct continued after the hearing. I raised at the hearing the claimant reducing her claim to focus on a limited number of key events or treatments. This gave a route to clarify the claims and provide a route forward. Mr Emezie obtained instructions and confirmed this was agreed in principle, without any number or

events being specified. I agreed to hold off issuing my decision in case the claimant wanted to revert with specific proposals. Instead, by their letter dated 13 November 2025, the claimant's solicitors have just listed a number of heads of claim, as set out above. This list includes one item (sexual assaults) that is outside the tribunal's jurisdiction. The list contains the same heads of claims as in Mr Emezie's speaker notes provided for the hearing and more heads than listed in Employment Judge Cawthray's case management order from the October 2024 hearing. Crucially, no events or treatments are provided.

51. This demonstrates another example of refusing to engage with the tribunal or clarify the issues. There is no suggestion that this will change and so the cases risk being stuck without being able to progress even to the stage where the length of the final hearing can be assessed or a timetable to it set. I have already determined that the claimant's conduct meets the threshold of unreasonableness for the purposes of Rule 38(1)(b) of the Rules. This reinforces this and shows that the conduct is ongoing, even when faced with the prospect of strike out.

52. The failure to comply with Employment Judge Cawthray's directions to produce further and better particulars also qualifies as a breach for the purposes of Rule 38(1)(c) of the Rules. As the non-compliance prevents the case being progressed, I find it sufficient to consider strike out.

53. I now turn to whether a fair trial is still possible. This is the second limb of the guidance in ***Bolch*** and also the third ground in the respondent's application (pursuant to Rule 38(1)(e)). As referred to above, in considering this a proportionate approach needs to be taken.

54. The events referred to in the claimant's claim date back to 2019 and 2020. Five years have already passed since then. If the issues were clarified and a trial length of over five days agreed (which I consider overwhelmingly likely), a final hearing is unlikely before 2029. Witnesses would in this situation have to recall events nearly ten years before, which is far from ideal.

55. Mr Emezie points out that extensive notes will be available from then and witness statements can be prepared earlier. Nine out of eleven potential witnesses have expressed readiness to provide evidence, which is an impressive total. He therefore argues that a fair trial is still possible. He also argues that the delay is not the claimant's fault, contending that the delays have been caused by unreasonable strike out applications and the tribunal's backlogs.

56. Mr Cook disagrees with those arguments. He contends that inevitably memories fade and reliance on contemporaneous notes provide only limited assistance. The two witnesses not available to give evidence are important omissions and delays in obtaining statements arise from the claimant's refusal to clarify her case. In any event, fault for delay is not a relevant factor, the test is whether objectively a fair trial can be conducted. The respondent has already incurred substantial costs and the continuance will require more.

57. I have taken these submissions and the evidence heard into account. I agree with Mr Emezie that the respondent has access to a useful cast of witnesses and contemporaneous notes to aid recollection; that said, memories do fade and by 2029 we will be approaching the outer limits of what is reasonable for a fair trial. Some of the delay, particularly with the tribunal backlog, are out of the claimant's hands. However, other delays have been caused by the conduct of Mr Ogbonmwan, leading to a reasonable put procedurally flawed strike out application. The costs on that are not a relevant consideration, costs in trial preparation are an inevitable part of the litigation process and the fact that money has been spent elsewhere does not change this.

58. Overall, I conclude that if the issues were clarified at this stage, a fair trial would still be objectively possible. However, the issues have not been clarified and the claimant has wilfully failed to do this, despite repeated efforts and the express directions of the tribunal to do so. The letter of 13 November 2025 reinforces that failure. Even if there was a change of heart, there would inevitably be a further substantial delay before these would made clear, causing more delay to the final hearing date. It would take up more tribunal resource and time where the conduct displayed to date is to disregard important tribunal directions. The delay would cause further memory fade and make a fair trial impossible. Accordingly, I conclude that a fair trial is no longer possible. This satisfies the second limb of ***Bolch*** and the jurisdictional threshold for strike out under Rule 38(1)(e).

59. Finally, I turn to whether alternative options are available.

60. As a first option, I could simply do nothing or make new directions for clarification. That option is, however, not realistic as the claimant's continuing failure to clarify the issues has made a fair trial no longer possible; doing nothing or requiring clarification will in all likelihood not cure a position that the claimant has already had ample opportunity to address.

61. I have considered a costs order but the existing order has not been complied with and there is no evidence that the claimant has the ability to satisfy that order, let

alone another. I conclude therefore that this will provide little if any incentive for the claimant to change her conduct.

62. Neither party suggested a deposit order and such a route is in any event only available where a claim has little reasonable prospect of success, as provided for in Rule 40(1); without clarity on the issues, I cannot assess their prospect of success. This is therefore not an alternative.

63. We discussed as a final alternative the making of an unless order. Mr Cook rightly pointed out that these are only appropriate when there is a specific and measurable objective outcome that is required. I agree that compliance with an unless order that required the claims to be clarified within a defined timeframe would be at the very least extremely difficult to assess and in all likelihood not take us any further forward. The claimant has in any event ample opportunity to clarify her claims and has chosen not to do so, even with the benefit of a new representation.

64. An unless order might have been possible if the claimant had committed to reliance on a specified number of events or treatments. Whilst she agreed this in principle, no number was offered and the letter of 13 November 2025 appeared to row back from this by instead listing an extensive list of heads of claim, one of which was not even within the tribunal's jurisdiction. I do not have the power to require that the claims are limited to a specified number of events or treatments and so an unless order requiring her to limit her claim and specify a finite number of events would be unlawful. As a result, this route is not open to me.

65. Accordingly, I have to conclude that no alternative to strike out is available to me.

Strike out decisions

66. It was agreed by the parties that the second claim was a duplication of the first claim, except for automatically unfair dismissal, and that the duplicated parts should be struck out. As a duplication, they have no reasonable prospect of success in any event. Accordingly, and by consent, I strike out the second claim, except for the complaint of automatically unfair dismissal.

67. I have concluded that

    a. the claimant's conduct met the jurisdictional threshold for the purposes of Rule 38(1)(b) of the Rules

b. the claimant had not complied with the directions of the tribunal and this met the jurisdictional threshold for the purposes of Rule 38(1)(c) of the Rules
c. a fair final hearing of the claims was no longer possible, including for the purposes of Rule 38(1)(e) of the Rules
d. there was no reasonable alternative to strike out

68. As a result, I determine that both cases should be struck out pursuant to each of Rule 38(1)(b), (c) and (e).

Reconsideration request

69. The claimant applied by email dated 15 November 2024 for the costs order to be revoked as the underlying reasons for the costs order (the strike out of the cases) had been overturned by the EAT. This request was twice refused by Employment Judge Wright, as referred to above; she said that the costs order was given for different reasons and the application for reconsideration was in any event made out of time.

70. Mr Emezie renewed this request at the hearing. He argued that an application to reconsider a decision can be made at any time and contended that Employment Judge Wright should not have considered the reconsideration applications as she was biased, having had her strike out decision overturned. In any event, the tribunal did not have, in his contention, jurisdiction to make the original costs order as Rule 75 of the Rules prevented any decision being made until a judgment finally determining the proceedings was made; as that decision had been struck out, he argued that the costs order became void. He argued that in any event it was in the interests of justice to revoke the costs order as it was made on the basis that the cases were struck out, a decision that the EAT had overturned.

71. Mr Cook disagreed with these arguments, saying that Mr Emezie had misunderstood Rule 75, that no appeal or reconsideration applications had been made in time and the costs order was unconnected to the strike out decision and so did not become void when the strike out decision was overturned.

72. I considered these submissions and the evidence I was referred to. No appeal or application for reconsideration had been made within the permitted time period and so this application was made out of time. However, Rule 68 of the Rules does give the tribunal a general power of reconsideration so I will consider the application on that basis.

73. However, I do view this application as already considered and determined by Employment Judge Wright. The EAT said she should not consider the strike out application again but not made such determination in relation to the costs order. Indeed, it is notable that the costs order is not referred to in the EAT judgment, undermining the argument the costs order should fall away as a result of that decision. There is no reason that Employment Judge Wright should not consider a reconsideration argument and compelling reasons why she should do so, given her familiarity with the cases and the costs order. There is no basis for Mr Emezie's argument that she is biased and this is utterly rejected; indeed. Accordingly, given she has determined the issue already, I cannot revisit her decision and the claimant's recourse is to make an out of time appeal to the EAT.

74. Notwithstanding this decision, I addressed in my oral judgment both the Rule 75 argument and the contention that the overturning of the strike out decision mean the costs order should be revoked in the interests of justice. I therefore briefly reiterate these reasons below.

75. I begin with Rule 75 first. Rule 75(1) provides as follows:

A party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties.

76. Mr Emezie argues that this means that a costs order cannot be applied for until after a judgment finally determining the proceedings has been sent to the parties. I do not agree. The Rule clearly provides that there is a cut off date for applications but does not state that they can only be made once a judgment has been made. Indeed, costs order are regularly made before any judgment or interlocutory decision is made. The tribunal had jurisdiction to consider the costs application when made and no overturning of the strike out decision affects this.

77. The second argument seeks to link the costs order with the strike out decision and suggests that is voided or should be set aside because of the strike out decision. As mentioned above, the EAT judgment does not refer to the costs order so there is no express voiding or advice to do so. Indeed, that decision was not made because the EAT found Mr Ogbonmwan's behaviour acceptable but because of procedural flaws.

78. Written reasons for the costs order were given by Employment Judge Wright. Mr Emezie has referred to the first paragraph of the reasons as evidence that the costs order was made because the cases were struck out. However, that is to

misread that paragraph and indeed the written reasons as a whole. The reference to the strike out is merely by way of background and the reasons give a different basis for the decision, namely the conduct of Mr Ogbonwman. It is not related to the costs order and there is therefore no reason, express or implied, that the decision is voided by the strike out decision being overturned. By the same token, it is not in the interests of justice to revisit a separately considered decision which is not dependent on the strike out because that decision was overturned because of procedural irregularity.

79. Accordingly, the claimant's arguments are rejected.

80. Without any convincing argument that Employment Judge Wright erred in law, it is not in the interests of justice or in accordance with the overriding objective to reconsider a decision that has already been made and reconsidered on the same grounds.

81. As a result, I conclude that there is no reasonable prospect of the original decision being varied or revoked and must therefore refuse the application for reconsideration pursuant to Rule 70(2) of the Rules.

Decision

82. Accordingly, the judgment of the tribunal is that the claimant's application for reconsideration of the costs order made on 5 June 2023 is refused.

Approved by:
Employment Judge Lumby
28 November 2025

Sent to Parties.
17 December 2025