



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case Number: 8001092/2025**

**Held remotely by video from Glasgow on 19 November 2025**

**Employment Judge: Claire McManus**

**Mr O Nnamuchi**

**Claimant  
In Person**

**UNISON Scotland**

**Respondent  
Represented by:-  
Mr G Bathgate  
Solicitor**

## **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

- The complaint under the Trade Union and Labour Relations (Consolidation) Act section 146 is struck out under Rule 38(1)(a) of the Employment Tribunal Procedure Rules 2024 on the ground that it has no reasonable prospect of success because the claimant does not seek to prove that he was at the material time an employee of the respondent and employee status is a necessary condition for a successful complaint under that section 146.
- The complaint under the Employment Rights Act 1996 section 13 is struck out under Rule 38(1)(a) of the Employment Tribunal Procedure Rules 2024 on the ground that it has no reasonable prospect of success because the claimant does not seek to prove that he was at the material time an employee or a worker of the respondent and either status is a necessary condition for a successful complaint under that section 13.
- The complaint in respect of the respondent's alleged negligence is struck out under Rule 38(1)(a) of the Employment Tribunal Procedure Rules 2024 on the

ground that it has no reasonable prospect of success because the Tribunal does not have jurisdiction to determine such a complaint.

- The complaint in respect of the respondent allegedly including the claimant in unlawful industrial action is struck out under Rule 38(1)(a) of the Employment Tribunal Procedure Rules 2024 on the ground that it has no reasonable prospect of success because the Tribunal does not have jurisdiction to determine such a complaint.
- The complaint in respect of the respondent's alleged breach of union rules and / or procedures is struck out under Rule 38(1)(a) of the Employment Tribunal Procedure Rules 2024 on the ground that it has no reasonable prospect of success because the Tribunal does not have jurisdiction to determine such a complaint.
- The complaint under TULRA(C)A section 174 is not struck out and proceeds defended.
- The complaint under TULRA(C)A section 64 is not struck out and proceeds to determination by the Employment Tribunal.
- The Response is not struck out and the remaining complaints proceed defended.

## REASONS

### Background

1. The claimant was a member of UNISON trade union while employed by Dundee University. The claimant was at no time an employee of the respondent. The claimant's position in his ET1 is that "UNISON Scotland acted in breach of its legal and ethical duties, and my rights as a member were violated. Specifically:
  - Breach of statutory duty under the Trade Union and Labour Relations (Consolidation) Act 1992, including:
    - Section 174 – Duty not to unreasonably exclude or remove members

- Section 146 – Protection from detriment on grounds related to union membership
- Failure to communicate material changes in membership or payment status
- Failure to provide representation or support without a fair or transparent process
- Reliance on '*concealed employer classifications that misrepresented my employment situation and undermined my rights*'.
- Participation in '*unlawful treatment*'.
- Collection of dues not meant to be collected if they are associated with any dismissal in breach of the contractual/statutory duties of trade Union membership under Trade Union and Labour Relations (Consolidation) Act 1992, Section 178.

2. In his ET1 the claimant relied on the following in respect of the Employment Tribunal having jurisdiction to determine complaints by a Trade Union member against a Trade Union:-

- Trade Union and Labour Relations (Consolidation) Act 1992 ('TULRCA') section 64 and section 146
- Employment Rights Act 1996 ('ERA') section 64.
- Common law breach of trade union's duty in respect of alleged failure to properly represent
- Alleged inclusion in unlawful industrial action
- Alleged breach of Union rules or duties.

3. In his ET1 the claimant sought the following remedies:-

- Declaration that the union unlawfully denied him representation and acted contrary to its statutory duties
- Declaration, if found, that unlawful deduction from wages had occurred.

- Award of compensation for loss of opportunity, distress, and detriment suffered due to union inaction
- Direction to the union to re-instate or retroactively validate his membership status.
- Recommendation or order for changes to union practices to prevent similar occurrences
- Provision of any other remedy the Tribunal deems appropriate

4. The ET1 was sought to be presented on 2 May 2025 but was initially rejected at the vetting stage and the claimant was informed that rejection was on the basis of Rule 10(3) of the Employment Tribunal Procedure Rules 2024 ('The Tribunal Rules') i.e. that the respondent did not have a connection with Scotland. It is unclear why rejection was made on that basis. The claimant was given the opportunity to apply for reconsideration of that decision and did so. On reconsideration, the claim was treated to have been presented on 2 May 2025. The ET1 was served on the respondent with notice of a Case Management Preliminary Hearing ('CMPH'). The ET1 sets out factual averments.

5. In their ET3 Grounds of Resistance, in summary, the respondent's position is to rely on:-

- The claimant being at no time an employee or a worker of the respondent;
- Advice and representation from the respondent and its instructed solicitors being given to the claimant in respect of the claimant's dismissal by the University of Dundee.
- Representation being provided to the claimant by the respondent and their instructed solicitors in respect of a claim to the Employment Tribunal re that dismissal.
- The respondent's instructed solicitors withdrawing from acting for the claimant in that claim, in circumstances allowed under the respondent's discretionary legal advice and assistance scheme

- The claimant being advised that he could continue his claim without representation, should he wish to do so.
- The claimant's membership of the respondent lapsing because of non-payment of dues.

6. The respondent's further position in their ET3 Grounds of Resistance was that:-

- The Tribunal does not have jurisdiction to consider a claim by the Claimant under Section 146 of Trade Union and Labour Regulations (Consolidation) Act 1992 ("TULRCA") as the Claimant was neither employed by the Respondent nor was he a worker under contract with the Respondent and that complaint should be struck out as it has no reasonable prospect of succeeding.
- The Statement of Claim has no factual averments underpinning a claim under Section 147 of TULRCA. The Claimant does not aver that he has been excluded or expelled by the Respondent. In any event, the Respondent denies that it has excluded or expelled the Claimant. His membership has lapsed through his non-payment of subscription.
- The Claimant has no factual averments to support a claim under Section 64(2) of TULRCA. He does not aver when he was unjustifiably disciplined or detail any facts that he was disciplined at all in terms of section 64(2) TULRCA and that complaint should be struck out as it has no reasonable prospect of succeeding.
- The Respondent denies that it has excluded or expelled the Claimant nor has it unjustifiably disciplined him.

7. On initial consideration the claim was allowed to proceed to the arranged CMPH, which proceeded on 7 July 2025, before EJ Strain. The Note issued following that CMPH records that the claimant was directed to submit further and better particulars of his complaints. The Note from that CMPH records that it was explained to the claimant that he required to set out the legal and factual basis of his complaints. The respondent was to respond to the claimant's further particulars. A further CMPH was arranged for 11 September 2025.

8. On 18 July 2025 the claimant sent correspondence referring to possible strike out of the Response under Tribunal Rule 38(c) on the basis of the respondent's alleged '*deliberate attempt to sideline or exclude*' the claimant in their correspondence of 30 June, 2 July, 16 July and 17 July 2025. That correspondence was emails sent to the Tribunal office in respect of the respondent's representatives' difficulties with accessing the Tribunal portal. A response was sent to parties on 22 July stating:-

*"Legal Officer F Paton has directed the Tribunal to write to parties as follows: The Claimant's correspondence has been referred to Legal Officer F Paton who advises the Claimant that the correspondence they have referenced is regarding a technical query that the Respondent had. There is no need to copy this kind of correspondence to the other party as no applications are being made and no information relating the case is being disclosed."*

9. On 22 July 2025 the claimant asked that his correspondence '*be treated as an application and passed unto a Judge for consideration*'. A response was sent on 24 July in the following terms:-

*"Employment Judge Jones has directed the Tribunal to write to the claimant as follows:*

*"The claimant is referred to the correspondence from the Legal Officer, which explains that the correspondence from the respondent which was not copied to the claimant related only to technical issues regarding their access to the HMCTS portal and not the conduct of the case and therefore did not require to be copied to the claimant. It is not clear what application the claimant is making in that regard."*

10. The claimant applied for strike out of the response on the basis of the terms of his email to the Tribunal of 18 July 2025. The respondent's representative was asked for comment on this application. They opposed the application for strike out on the following grounds:-

- Inconsistency with the overriding objective and the interests of justice.

- The emails were not in any way related to the substance of the claim and related only to technical issues regarding the respondent's representatives being able to access documents that had been loaded on to the Tribunal portal.
- In the circumstances, it is open to the Tribunal to order a departure from the Rule.
- A departure from the Rule would be in the interests of justice.

11. The respondent's representative's further position was that if the Tribunal was minded to strike out the respondent's response, then they would seek a hearing to address the Tribunal more fully on their grounds of opposition. The claimant responded to the respondent's position by his email of 5 August 2025. On 7 August 2025 correspondence was issued to parties from the Tribunal stating:-  
*"Employment Judge Jones has directed the Tribunal to write to parties and refuse the claimant's application for strike out of the response as it has no prospects of success."*

12. The claimant replied on the same date stating:-  
*"I write in respect to the application for strike out I made on the 25th July 2025, and wishes to apply for a hearing as soon as possible to demonstrate that the answers provided by the respondents do not amount to opposition to the application and the application has reasonable prospects of success. The application was made before 5 August 2025 as stated above, I reattach the application and the present decision which was based on correspondences of 5th August 2025."*

13. With that correspondence, the claimant submitted further documentation and further reasons for his application for strike out. These are summarised as:-

- Reliance on the content of email correspondence from the respondent's representatives to the Tribunal of 30 June, 2 July, 16 July and 17 July 2025.
- Reference to the respondent not actively defending the claim.
- No departure Order having been made by the Tribunal under Rule 90(3).

14. The claimant submitted his further position in relation to Rule 90 in his email of 8 August 2025. That was referred to in correspondence issued from the Tribunal on 11 August 2025 stating:-

*"Employment Judge Jones has directed the Tribunal to write to the claimant as follows:*

*"The claimant's correspondence is noted. The Tribunal has already refused the application for strike out of the respondent's response. The claimant is referred to the previous correspondence in that regard. The application has been refused."*

15. On 13 August 2025 the claimant submitted his response to the requested further particulars. That included:-

*"I submit that UNISON Scotland acted in breach of its legal and ethical duties, and my rights as a member were violated. Specifically: Breach of statutory duty under the Trade Union and Labour Relations (Consolidation) Act 1992, including: Section 174 – Duty not to unreasonably exclude or remove members. Section 146 – Protection from detriment on grounds related to union membership.*

*Failure to communicate material changes in membership or payment status. Failure to provide representation or support without a fair or transparent process.*

*Reliance on concealed employer classifications that misrepresented my employment situation and undermined my rights.*

*Participation in unlawful treatment.*

*Collection of dues not meant to be collected by them if they are associated with any dismissal in breach of their contractual/statutory duties of trade Union membership under Trade Union and Labour Relations (Consolidation) Act 1992: "Section 178 [page 2 of the GoC and page 18 of the awaiting bundle]"*

16. The further particulars also set out that complaints were sought to be pursued in the Employment Tribunal relying on-

- TULRCA section 174 (right of an individual not to be excluded or expelled from a Trade Union)

- TULRCA section 146 (right of a worker not to be subjected to by their employer to detriment on grounds related to union membership or activities)
- TULRA section 64 (right of an individual not to be unjustifiably disciplined by a union - with reliance on TULRA section 65(2)(f) "*failing to agree, or withdrawing agreement, to the making from his wages (in accordance with arrangements between his employer and the union) of deductions representing payments to the union in respect of his membership.*"
- Negligence against the respondent
- Unlawful industrial action
- Breach of union rules and / or procedures
- Unlawful deductions

17. The alleged factual and legal basis of the complaints were unclear from the further particulars provided by the claimant. In addition to the complaints set out in the Note issued following the CMPH in July 2025, in those further particulars the claimant sought to rely on complaints of :-

- Direct discrimination contrary to section 13 Equality Act 2010 on the grounds of the protected characteristic of age (related to the '*misclassification*' of the claimant's position with University of Dundee to that with a '*younger demographic*'.
- Alleged unlawful discrimination (unspecified protected characteristic) re the Trade Union's provision of services to the claimant.

18. The respondent's representative responded to the claimant's further particulars, with reference to the potential complaints identified at the July CMPH and set out in the Note issued after that July CMPH. In summary, their position was:-

- On the basis of the claimant's position that he was advised by written communication of 18/19 November 2024 that his membership had lapsed due to non-payment of his subscription, if that was expulsion or exclusion (which is denied) then the Early Conciliation referral to ACAS ought to have been made by 17/18 February 2025 and was not made until 11 March 2025 and so the complaint is time barred.

- In respect of the complaint reliant on TULRA section 174, that the averred facts do not support a finding that the claimant has been expelled or excluded from UNISON and that the claimant's membership lapsed due to non payment of union contributions.
- In respect of the complaint reliant on TULRA section 146, that the claimant was not a worker or employee of the respondent and further that the relied on averments do not support a finding of detriment under section 146(1).
- In respect of the complaint reliant on TULRA section 64, that the claimant has not averred facts from which the claimant could find that that the claimant was the subject of unjustifiable discipline under sections 64 & 65 TULRA.
- That there are no averments to support a complaint under section 64 ERA (right to renumeration on suspension on medical grounds).
- That the Tribunal does not have jurisdiction to hear a claim of negligence
- That the Tribunal does not have jurisdiction to hear a claim re breach of union rules and / or policies
- That the claim for unlawful deductions has no basis in fact and is incompetent as the claimant was not an employee or worker of the respondent.
- That there is no causal link between the respondent's actions and the claimant's averred financial losses.

19. On 11 September 2025 the claimant made an application for a preparation time order against the respondent on the basis of the respondent's representative's alleged non-compliance with Orders issued with the CMPH Note in July 2025. It was the claimant's position that the respondent's representative had failed to provide email and contact details for joining the CVP CMPH arranged for 11 September. The claimant sought an Order for preparation time of at least £35,910.

20. The CMPH proceeded via CVP on 11 September, before EJ Hendry. The Note issued after that CMPH summarised proceedings. The respondent's

representative's position was to seek a Preliminary Hearing on strike out of the complaints. The claimant's position was to insist on his application for an Order for preparation time. That PH Note includes (at paragraph 4) reference to the claimant being asked what prejudice he had been put to by the respondent's representative's alleged failure to provide contact details for the CMPH, in circumstances where that hearing was proceeding as arranged. It records the claimant insisting on an application for strike out of the response. The Note records that EJ Hendry "*... suggested to Mr Nnamuchi that he was in danger of being regarded as acting in breach of Rule 76 by acting "vexatiously, abusively, disruptively or otherwise unreasonably."*" A PH to determine '*all applications for strike out*' was scheduled via CVP on 19 November 2025.

21. On 18 September 2025 the respondent's representative set out their response to the claimant's strike out application, reliant on :-

- The application being vexatious and unreasonable
- There being no failure to comply with the Order
- There being no requirement for the respondent's representative to provide contact details for this case
- That the claimant was not put to any additional costs through any asserted failure of the respondent's representative.

### **Proceedings at this PH**

22. I required to determine

- (1) The respondent's application for strike out of complaints.
- (2) The claimant's application for strike out of the response

23. The claimant's initial position was that he was prejudiced because he had not had sight of the respondent's representative's skeleton argument for this PH. That had been sent by email to the Tribunal office and the claimant at 17.21 on 18 November. The claimant's position was that he had not received this and that in accordance with directions at the September CMPH, he ought to have received the skeleton arguments 7 days before this PH. The claimant's position was that required 7 days to consider the respondent's position. The claimant

further relied on being unable to access the digital documents while using his mobile phone to attend the video hearing.

24. It was discussed that the position the respondent relies on in their skeleton argument is as set out in their response to the claimant's further particulars, that response having been sent to the Tribunal and to the claimant by email on 27 August 2025. I noted that in the skeleton submissions the respondent applies for the claim to be struck out of the grounds of being vexatious, in addition to the grounds of no reasonable prospects of success which are relied on in their response sent on 27 August. I noted that if that new basis was to be relied on then the claimant would require time to prepare. Mr Bathgate then confirmed that the respondent sought strike out on the grounds set out in the response sent on 27 August i.e. no reasonable prospects of success. In those circumstances, I considered it to be in accordance with the overriding objective of the Tribunal (particularly Rule 3(2)(d) re. avoiding delay) to allow some time for the claimant to consider the respondent's skeleton submissions, but not to postpone the PH. The claimant had had notice of the respondent's position from the respondent's representative's response of 27 August 2025.
25. This PH had started later due to the claimant's difficulties in connecting audio. I directed that there was an adjournment until 12.15pm to allow the claimant to consider the respondent's representative's skeleton submissions. I directed that these be re-sent to the claimant and the claimant confirmed his email.
26. In considering the application for strike out of the complaints, I took into account the guidance from the EAT referred to below and sought to identify the issues for determination by the Tribunal in the complaints. I first identified the complaints sought to be brought by the claimant. I directed that following the break there would be discussion on the identification of the issues in respect of those complaints. Mr Bathgate noted that his response of 27 August did not address the new complaints under the Equality Act 2010 and he would require to address the Tribunal on that. I noted that, in general terms, the complaints sought to be brought were under different categories, being:-

- Those which require the claimant to have been an employee of the respondent
- Those which the respondent relies on the Employment Tribunal not having jurisdiction to determine
- Those which fail to be determined on findings in fact

It was noted that issues of time bar also arise in respect of some complaints and that the claimant has latterly mentioned possible complaints under the Equality Act 2010, without information on the protected characteristic relied upon or the alleged discriminatory acts or failures.

### **Relevant Law**

27. Rule 38(1) of the Tribunal Rules 2024 provides that all or any part of a claim or response may be struck out if it is (1)(a) 'scandalous or vexatious or has no reasonable prospect of success'...(c) for non-compliance with any of these Rules or with an Order of the Tribunal.
28. The respondent seeks strike out of the claimant's complaints on the grounds of 'no reasonable prospect of success'. That requires a tribunal to form a view on the merits of a case, and only where it is satisfied that the claim has no reasonable prospect of succeeding can it exercise its power to strike out. (*A v B and anor 2011 ICR D9, CA*). Reasonable prospects of success does not mean prospects of receiving a financial award (*Evans v Brent London Borough Council 2020 ICR 1485, EAT*).
29. The guidance from the EAT in *Mbuisa v Cygnet Healthcare Ltd EAT 0119/18* was that where the claimant is a litigant in person (non legally represented) the tribunal should take time to identify the issues before considering whether the claim should be struck out on the ground that it has no reasonable prospect of success. Strike out is a draconian step that should be taken only in exceptional cases such as where it is instantly demonstrable that the central facts in the claim are untrue or there is no real substance in the factual assertions being made. The tribunal should take the claimant's case at its highest, unless contradicted by plainly inconsistent documents. Particular caution should be

exercised if a case is badly pleaded — for example, by a litigant in person, especially one whose first language is not English or who does not come from a background such that he or she is familiar with articulating complex arguments in written form.

30. Further guidance on the approach which should be taken by Employment Tribunals when considering strike out of a complaint brought by a litigant in person was given by the EAT (HHJ James Tayler) in *Cox v Adecco Group UK & Ireland and ors 2021 ICR 1307, EAT:-*
  - if the question of whether a claim has reasonable prospects of success turns on factual issues that are disputed, it is highly unlikely that strike-out will be appropriate
  - There has to be a reasonable attempt at identifying the claim and the issues before considering strike-out or making a deposit order. The claimant's case must ordinarily be taken at its highest and the tribunal must consider, in reasonable detail, what the claim(s) and issues are.
  - A fair assessment of the claim(s) and issues should be carried out on the basis of the pleadings and any other documents in which the claimant seeks to set out the claim
  - In the case of a litigant in person, the claim should not be ascertained only by requiring the claimant to explain it while under the stresses of a hearing;
  - Reasonable care must be taken to read the pleadings (including additional information) and any key documents in which the claimant sets out the case.
  - In some cases, a proper analysis of the pleadings, and of any core documents in which the claimant seeks to identify the claim, may show that there really is no claim and therefore no issues to be identified.
  - Strike out is not a way of avoiding rolling up one's sleeves and identifying, in reasonable detail, the claims and issues;
  - Respondents, particularly if legally represented, should, in accordance with their duties to assist the tribunal to comply with the overriding objective and not to take procedural advantage of litigants in person, assist the tribunal in identifying the documents, and key passages of the

documents, in which the claim is set out, even if it may not be explicitly pleaded in a manner that would be expected of a lawyer, and should take particular care if a litigant in person has applied the wrong legal label to a factual claim that, if properly pleaded, would be arguable

- If the claim would have reasonable prospects of success had it been properly pleaded, consideration should be given to the possibility of an amendment, subject to the usual test of balancing the justice of permitting or refusing the amendment, taking account of the relevant circumstances
- Litigants in person also have responsibilities in this context. So far as they can, they should seek to explain their claims clearly, even though they may not know the correct legal terms, focusing on core claims rather than trying to argue every conceivable point. The more prolix and convoluted the claim is, the less a litigant in person can criticise an employment tribunal for failing to get to grips with all the possible claims and issues. Litigants in person should appreciate that, usually, when a tribunal requires additional information it is with the aim of clarifying, and where possible simplifying, the claim, so that the focus is on the core contentions. The overriding objective also applies to litigants in person, who should do all they can to help the employment tribunal clarify the claim.

31. Similar guidance was given by the EAT (Mr Justice Choudhury, then President of the EAT) in *Malik v Birmingham City Council and anor EAT 0027/19*.

### **Identification of Issues in Complaints**

32. In discussion with the claimant and the respondent's representative I first identified the complaints, as follows:-

- TULRCA section 174 (right of an individual not to be excluded or expelled from a Trade Union)
- TULRCA section 146 (right of a worker not to be subjected to by their employer to detriment on grounds related to union membership or activities)

- TULRA section 64 (right of an individual not to be unjustifiably disciplined by a union - with reliance on TULRA section 65(2)(f) "failing to agree, or withdrawing agreement, to the making from his wages (in accordance with arrangements between his employer and the union) of deductions representing payments to the union in respect of his membership."
- Alleged negligence by the respondent
- Alleged unlawful industrial action
- Alleged breach of union rules and / or procedures
- Alleged unlawful deductions

33. In further discussion with the claimant and the respondent's representative I then identified the issues for determination of the complaints, as follows:-

*TULRCA section 174 (right of an individual not to be excluded or expelled from a Trade Union)*

- (1) Was the claimant expelled from UNISON, within the meaning of section 177(2)(b) TULRCA?
- (2) If so, was that expulsion permitted under section 174(2)(a) TULRCA?
- (3) If not so permitted, did the claimant suffer any financial loss as a result of his expulsion?

*TULRCA section 146 (right of a worker not to be subjected to by their employer to detriment on grounds related to union membership or activities)*

- (4) Was the claimant an employee of UNISON?
- (5) If so, was the claimant subjected to detriment by UNISON contrary to section 146 TULRCA?

*TULRA section 64 (right of an individual not to be unjustifiably disciplined by a union - with reliance on TULRA section 65(2)(f) "failing to agree, or withdrawing agreement, to the making from his wages (in accordance with arrangements between his employer and the union) of deductions representing payments to the union in respect of his membership."*

- (6) Did UNISON fail to agree or withdraw agreement to make deductions from the claimant's wages in respect of his membership?
- (7) If so, by doing so was a determination made, or purportedly made, in terms of TULRCA section 64(2)?
- (8) If so, by doing so was the claimant unjustifiably disciplined by UNISON in terms of TULRCA section 65(2)(f)?

*Negligence against the respondent*

- (9) Was the respondent negligent in their provision of representation to the claimant?

*Unlawful industrial action*

- (10) Was the claimant included in unlawful industrial action?
- (11) If so, is the claimant entitled to any remedy?

*Breach of union rules and / or procedures*

- (12) Did the respondent act in breach of trade union rules and / or procedure?
- (13) If so, is the claimant entitled to any remedy?

*Unlawful deductions*

- (14) Was the claimant a worker or employee of the respondent?
- (15) If so, did the respondent make deductions from the claimant's wages, contrary to section 13 of the ERA?
- (16) If so, what financial loss did the claimant have as a result of such unlawful deductions?

*Time Bar*

- (17) Were the complaints which the Tribunal has jurisdiction to determine submitted to the Employment Tribunal within the relevant statutory limitation period?

34. It is the respondent's position that the complaints under sections 64 and 174 TULRCA are time barred. ACAS notification was on 11 March 2025 and the

ACAS ECC was issued on 2 April 2025. The ET1 was submitted on 2 May 2025 (confirmed by letter from the Employment Tribunal of 12 May 2025). If the date of the last act relied on was 8 November 2024, then the complaints are on the face of it time barred, contact having been made with ACAS outwith the primary limitation period. It will then be for the claimant to show that it was not reasonably practicable for those complaints to have been submitted within the relevant limitation period.

35. Although there was mention in previous CMPH Notes of a potential complaint under section 64 ERA (right to renumeration on suspension on medical grounds) that is not a complaint pursued by the claimant.

#### **Decision on Strike Out of the Complaints**

36. With reference to the guidance in *Cox v Adecco Group UK & Ireland and ors*, in respect of each of the identified complaints, I considered whether determination of the complaint required findings on contested facts. The claimant does not contest that he was not an employee or worker of the respondent. The complaints under TULRCA section 146 and for unlawful deductions from wages under section 13 ERA both require the claimant to have at the material time been an employee or worker of the respondent. In circumstances where the claimant does not seek to prove that he was at the material time an employee or worker of the respondent, there is no question of factual dispute. The claimant does not seek to rely on a factual matrix to prove that he was an employee or worker of the respondent. The complaints under TULRCA section 146 and for unlawful deductions from wages under section 13 ERA are both dependant on the claimant having been an employee or worker of the respondent at the material time. In these circumstances, the claimant's complaints under section 146 TULRACA and under section 13 ERA do not have reasonable prospects of success. These complaints could only succeed if the claimant was at the material time a worker or employee of the respondent. As the claimant does not seek to prove that, the complaints under section 146 TULRACA and under section 13 ERA are struck out under Rule 38(1)(a). The issues identified as 4 – 5 and 14 - 16 above therefore do not fall to be determined by the Employment Tribunal.

37. The complaint reliant on section 174 TULRCA does require findings on disputed factual issues. Taking the claimant's complaint at its' highest, the claimant seeks to prove that he was excluded or expelled from UNISON, within the meaning of section 174. It is the respondent's position that the claimant was not excluded or expelled, rather that the claimant's membership of their trade union lapsed on non-payment of dues. It would be draconian to determine the prospects of success of that complaint without hearing evidence on what the claimant relies on as being his exclusion or expulsion. That complaint is therefore not struck out and may proceed to a hearing for determination of the identified issues re that complaint (issues 1 – 3 set out above), if not time barred.
38. Similarly, the complaint reliant on section 64 TULRCA also requires findings on disputed factual issues. Taking the claimant's complaint at its' highest, the claimant seeks to prove that he was unjustifiably disciplined by the respondent in terms of TULRA section 65(2)(f). It would be draconian to determine the prospects of success of that complaint without hearing evidence on what the claimant relies on as being his unjustified disciplinary action. That complaint is therefore not struck out and may proceed to hearing for determination of the identified issues re that complaint (issues 6 – 8 set out above), if not time barred.
39. The Employment Tribunal does not have jurisdiction to determine a complaint of negligence. The Certification Officer has responsibility for ensuring that trade unions carry out their statutory duties. Negligence claims are determined in court proceedings. Separate time bar provisions apply to court provisions. The complaint in respect of alleged negligence of the trade union does not have reasonable prospects of success because the Employment Tribunal does not have jurisdiction to determine such a complaint. The complaint of the respondent's alleged negligence is struck out under Rule 38(1)(a) of the Tribunal Rules. The issue identified as 9 above therefore does not fall to be determined by the Employment Tribunal.
40. The Employment Tribunal does not have jurisdiction to determine a claim in respect of the claimant's alleged inclusion in unlawful industrial action. The

complaint in respect of the claimant's alleged inclusion in unlawful industrial action does not have reasonable prospects of success because the Employment Tribunal does not have jurisdiction to determine such a complaint. The complaint of the claimant's alleged inclusion in unlawful industrial action is struck out under Rule 38(1)(a) of the Tribunal Rules. The issues identified as 10 - 11 above therefore do not fall to be determined by the Employment Tribunal.

41. The Employment Tribunal does not have jurisdiction to determine a complaint of alleged breach of Trade Union rules. The Certification Officer handles complaints about breaches of trade union rules. The complaint in respect of the respondent's alleged breach of trade union rules does not have reasonable prospects of success because the Employment Tribunal does not have jurisdiction to determine such a complaint. The complaint of the respondent's alleged breach of trade union rules is struck out under Rule 38(1)(a) of the Tribunal Rules. The issues identified as 12 - 13 above therefore do not fall to be determined by the Employment Tribunal.

#### **Decision on Strike Out of the Response**

42. Following an adjournment, the PH continued for consideration of the claimant's application for strike out of the response. At commencement after that adjournment the claimant was in a public café. There was background noise and it was inappropriate for the PH to be conducted from that place. A further short adjournment was allowed for the claimant to move to a private place. There was then further adjournment to ensure that the claimant had a secure wifi connection and was able to hear and be heard consistently.
43. The claimant's application for strike out of the response based on the correspondence of 30 June, 2 July, 16 July and 17 July 2025 has already been determined by an Employment Judge. The claimant was notified of EJ Jones' decision on that on 7 August 2025.
44. The claimant's email of 11 September 2025 was an application for preparation expenses. In that application, the claimant relied on the respondent's representative's alleged non-compliance with Orders issued with the CMPH

Note in July 2025 by failing to provide email and contact details for joining the CVP CMPH arranged for 11 September. The claimant sought an Order for preparation time of at least £35,910.

45. Following the adjournments it was confirmed that, although not previously set out in writing, the claimant sought strike out of the response on the basis of
  - (1) The respondent's representative's failure to provide contact details for the CMPH on 11 September 2025
  - (2) The respondent's representative's failure to provide their skeleton argument to the claimant 7 days before this PH.
46. The Note issued following the CMPH on 7 July 2025 contained Orders. Those Orders did not include an Order for the respondent to provide joining details for the CMPH on 11 September. The claimant relies on what is set out in the Notice of Hearing issued on 18 July 2025. That Notice of Hearing does not include Case Management Orders issued under Rule 30. It does not contain an order of the Tribunal that the respondent's representative provide contact details. The claimant relied on this being a direction or instruction from the Tribunal.
47. The Note issued following the CMPH on 11 September does not contain Case Management Orders but does state at paragraph 5 (in bold):-

*“As Mr Nnamuchi is a party litigant it would be helpful if Mr Bathgate sends a skeleton note of his arguments to the claimant 7 days before the hearing to allow him an opportunity to consider the legal arguments that are to be deployed against him.”*
48. Mr Bathgate accepted that he had not sent the skeleton arguments to the claimant 7 days before this PH and apologised for that. He relied on there being no order or direction from the Tribunal, rather there being a 'suggestion'. He relied on the claimant having notice of the respondent's legal arguments from their response to the claimant's further particulars, on the claimant having been given time to consider the skeleton arguments, on the claimant not being prejudiced by the failure to provide the skeleton arguments within the suggested

timescale; on this PH being conducted in a '*constructive and collegiate way*' and on the conduct not warranting the draconian sanction of strike out of the response.

49. The respondent has not failed to comply with an Order of the Tribunal. The CMPH arranged for 11 September proceeded as arranged and without prejudice to either party. Strike out is a draconian measure. Under Rule 3(3) of the Tribunal Rules, in interpreting and applying the Tribunal Rules the Tribunal must seek to give effect to the overriding objective. That includes to deal with cases proportionately and avoiding unnecessary formality. The claimant's application for strike out of the response does not succeed because to strike out the response in the circumstances relied upon by the claimant would be draconian and would not be in accordance with Rule 3 of the Tribunal Rules. The complaints which proceed do so defended.
50. The respondent did not fail to comply with an Order from the Tribunal. They were not Ordered to provide their contact details to the Tribunal office. The hearing proceeded as arranged and the claimant suffered no prejudice by the alleged failures. There is no basis for a preparation time award to be made in respect of the alleged failures.

### **Future Proceedings**

51. The following complaints proceed defended and may fall to be determined by an Employment Tribunal, dependant on whether they were submitted within the relevant limitation period, including the provisions in respect of extension of the limitation period by contact with ACAS:-
  - *TULRCA section 174 (right of an individual not to be excluded or expelled from a Trade Union)*
  - *TULRA section 64 (right of an individual not to be unjustifiably disciplined by a union - with reliance on TULRA section 65(2)(f) "failing to agree, or withdrawing agreement, to the making from his wages (in accordance with arrangements between his employer and the union) of deductions representing payments to the union in respect of his membership."*

52. A one day hearing in person will be scheduled to determine whether these complaints were submitted within the relevant limitation period (time bar).
53. If the claimant now seeks to pursue complaints under the Equality Act 2010 against the respondent, then he should set out the terms of his proposed amendment to this claim to include these complaints. The proposed amendment terms should include:-
  - What acts or failures are relied upon as being unlawful discrimination
  - What protected characteristic is relied upon in respect of those allegations.
  - The dates of the alleged acts or failures relied on as being unlawful discrimination
  - Who is alleged to be responsible for those acts or failures
  - What section(s) of the Equality Act 2010 are relied upon
  - If those acts or failures occurred more than 3 months ago, the reason why the complaints were not submitted earlier.
54. If the respondent objects to that proposed amendment, the hearing on time bar will also be to determine whether the amendment should be allowed. That decision will be made with reference to the factors outlined in Selkent Bus Co v Moore [1996] ICR 836.

**Date sent to parties**

15 December 2025