



EMPLOYMENT TRIBUNALS

Claimant: Mr F Dragomir

Respondent: City Abseiling Limited

RECORD OF A PRELIMINARY HEARING

Heard at: London South via CVP **On:** 27 and 28 November 2025

Before: Employment Judge Beckett

Appearances:

For the claimant: Mr A Kurtyan, US qualified attorney, acting pro bono

For the respondent: Mr G Williams, legal executive

RESERVED JUDGMENT

The claimant's application to strike out the ET/3 and grounds of resistance are refused.

REASONS

The parties and disputes

1. The respondent is a company which supplies abseiling-related services in respect of buildings, or building sites, operating at height.
2. The parties agree that the claimant worked for the respondent from 8 May 2019 to July 2024. The claimant undertook work as a rope access technician.
3. The parties disagree about when the claimant's engagement by the respondent came to an end, and whether the claimant was an employee, a worker or an independent contractor when he was engaged by the respondent.

Background in the proceedings

4. The case had been listed for a preliminary hearing in front of Employment Judge Ramsden on 24 July 2025. On that date, various directions were made in respect of this preliminary hearing.
5. The claimant had not attended that hearing, as it was reported that he was unwell. EJ Ramsden ordered the claimant to write to the Tribunal and respondent no later than 25 August with full and clear information as to why he had not attended the hearing, any evidence to support his non-attendance and details of when he expected to be well enough to attend a further hearing (Case Management Order paragraph 30).
6. In respect of this aspect, I asked the respondent's representative if they had received the information and supporting evidence. Mr Williams told the Tribunal that he had received a heavily redacted hospital discharge note, following which he had raised issues of timing. The claimant's representative then provided a taxi invoice and the dates of admission.
7. The hearing today was to determine any of the extant applications that the claimant pursues, and any application to amend his claim.
8. EJ Ramsden directed that the claimant send a document of no longer than 10 pages setting out the applications that were extant on 6 November 2025, and why the applications should be granted by the Tribunal.
9. By the same date, the claimant was ordered to make any further applications, again in a document no longer than 10 pages.
10. Neither of these documents were in the bundle. The applications cited in the index which were included in the bundle were:
 - Claimant's application to amend claim, dated 9 February 2025
 - Claimant's first application to strike out, dated 9 February 2025
 - Claimant's application for specific disclosure, dated 5 March 2025
 - Claimant's second application for strike out, dated 18 March 2025
 - Claimant's application for witness orders, dated 25 May 2025.
11. The claimant's representative explained that he had sent in the document on 6 November, which the respondent confirmed he had received. This was sent into my clerk, and I put the hearing back to review the applications.
12. The respondent was ordered to send a single document containing their representations by 13 November 2025. This again was limited to 10 pages. This document appears at pages 110 to 115 of the bundle. The last page includes a list of 11 authorities, said to be the "respondent's case list".
13. In terms of other documents for today's hearing, EJ Ramsden limited the bundle to 125 pages. The bundle provided for today's hearing consisted of 133 pages.

14. The parties have also provided witness statements from the claimant, Dorin Pavel and Vitalie Isac. The word limits for such statements were set at 7,500 words.
15. The word limits in respect of witness statements had been adhered to.
16. Mr Kurtyan asked the Tribunal to take notice of the fact that there was a large bundle of evidence which had been served for the previous hearing, which contained evidence supporting his applications. He stated that he was only allowed to provide 20 pages for today's hearing.
17. I declined to take notice of the larger bundle, as I had not read it and did not need to do so for the purpose of these applications.
18. This order should be considered alongside the Case Management Order (CMO) following the hearing on 24 July 2025.
19. The claimant, within his Claim Form dated 16 November 2024, has made claims that:
 - a) he had been unfairly dismissed (s98 Employment Rights Act 1996: the 1996 Act)
 - b) he was owed a statutory redundancy payment (s135 of the Act),
 - c) that he was owed statutory notice pay (s86 of the Act),
 - d) that he was owed arrears of pay (s13 of the Act),
 - e) that he was owed "other payments", and
 - f) that the respondent failed to provide him with written particulars of employment (s1 of the Act).

Claimant's application to strike out response

20. The application made by the claimant was that the response should be struck out on the following grounds:
 1. No reasonable prospect of success
 2. The conduct of the Respondent in the proceedings has been scandalous, unreasonable or vexatious,
 3. The manner in which the Proceedings have been conducted is an abuse of the tribunals process or is otherwise likely to disrupt the fair hearing of the claim
 4. There has been non-compliance with any Tribunal order or practice direction.
21. In written submissions the claimant referred to Rule 37. The relevant provision is now rule 38 of the Employment Tribunal Rules of Procedure 2024. I set out the legislation below.
22. Mr Kurtyan stated that the respondent's response should be struck out in whole on the grounds that it was scandalous, unreasonable and abusive of the Tribunal's process, and that a fair trial is no longer possible. He stated that the respondent had failed comply with disclosure obligations.

23. I asked for specific dates and details. Mr Kurtyan said that there was a deadline of 21 January 2025 according to the CMO, and that he had requested a lot of documents, had given an index with the missing documents and the respondent refused to disclose all the materials. He was given Mimecast links that did not work. He said that he had asked for “180 critical documents from the list” but had not been given them. The respondent made a strike out application themselves, which they then withdrew. Mr Kurtyan repeated that “a lot of documents” were not provided, and that the respondent had provided a list but not the documents.
24. Mr Kurtyan said that on 31 January he had again requested disclosure and highlighted missing documents. Mr Kurtyan said that the respondent “had replied but did not give proper responses. They said additional documents might be provided later on, but they never came”.
25. Mr Kurtyan stated that in February 2025 he had again asked the respondent “for completed disclosure”, and that they had failed to comply with those requests. He said that the respondent had “answered by saying that they would see what was included once the hearing bundle was produced. Basically, he said I will give it to you when I give it to you”.
26. Mr Kurtyan said that the dates exceeded the original CMO. He said that he wanted a disclosure order and to use the failure as another base for the strike out application. He said that he would have liked to have given the Tribunal the whole list, as it was a long list, with check marks and was very clear. However, he said that he could not put it in the exhibits as 20 pages not enough, and that this was why he was asking court to take judicial notice of the big bundle.
27. I had noted that in the CMO from the hearing on 24 June 2025, which was dealt with by EJ Ramsden, that the Tribunal had been provided with the following material for that hearing (as per paragraph 19 of the CMO):
 - Respondent’s bundle of 826 pages
 - Claimant’s bundle of 988 pages
 - Witness statement from Mr Pavel of 10 pages
 - Skeleton argument from the Respondent of 15 pages
 - Reading list including authorities amounting to 240 pages
28. Therefore, the total pages that parties expected the Tribunal on that date to have considered were in excess of 2,000.
29. It was wholly unrealistic to expect the Tribunal to have been able to even skim those documents for that one-day preliminary hearing. The volume of documentation is also disproportionate to the claims and responses in this case.
30. I therefore refused the repeated request made by Mr Kurtyan to either read the “big bundle”, or take judicial notice of it.
31. Mr Kurtyan said that the respondent’s conduct was evasive and that there are “180 plus missing documents”.

32. I asked when the Case Management Order had been made. Mr Kurtyan confirmed that was a suggested case management order.
33. Mr Kurtyan then raised issues with the links that he had been sent by the respondent. He said that all links were 1 kilobyte, and had either expired or were corrupted. He said that the links were not resent when requested. He described himself as “tech savvy”, and said that he had no issue with the technology, but that Mr Williams did mention an IT problem which he guessed was “still ongoing to this date”.
34. I raised the CMO with disclosure documents. Mr Kurtyan said that he did not deal with the specific disclosure issues at that hearing. He said that the Judge did give directions for service of other material, and directions for material to be served for today’s hearing.
35. I asked Mr Kurtyan to return to the application to strike out, rather than dealing with disclosure requests.
36. Mr Kurtyan stated that the main argument for strike out was that the respondent’s behaviour was scandalous and abusive, and that the most serious issue was “the deletion of evidence”.
37. He said that the respondent had admitted in their own evidence that messages were deleted from devices before disclosure, and even after the litigation started. He said that Mr Williams had attempted to justify the absence of “key communication”. Mr Kurtyan said that he intended to call Mr Williams as he is a witness as his involvement in this case was personal not just professional as he has hidden evidence.
38. He said that the “hiding of evidence” was “rampant”. However, he said that the information that the respondent had tried to delete had luckily been kept by the claimant, so they could see what messages had been deleted. However, he said that if the respondent had provided the messages alone they would never had known so much was deleted.
39. Mr Kurtyan again referred to matters which would be discussed in cross-examination including the phone being lost, incomplete and misleading documents, withheld documents and WhatsApp messages with missing periods. He said that the respondent had been very evasive.
40. Mr Kurtyan submitted that Mr VI had admitted being untruthful and that the respondent had interfered with the witnesses in this case. He said that 10 witnesses or maybe more had been interfered with. He commented that the final hearing was set for 2027, but he hoped that it would “not get to that”.
41. He submitted that the witnesses were under the control of the respondent and his company, and that they were told not to speak to the claimant. Mr Kurtyan said that the case is about status and the transformation from contractor to employee/ employer status. He said that the heart of the whole situation was that the respondent was trying to reclassify the claimant to his rightful relationship in law.

42. Mr Kurtyan stated that there were “doctored screenshots and missing documents” and that the Tribunal would hear evidence about witnesses being “coached, pressured and coerced not to testify, not to discuss, not show up in court”. He described the situation as really serious interference and that the respondent’s conduct was incompatible with the overriding objective. He submitted that the respondent cannot restrict witness access.
43. Mr Kurtyan repeated that the respondent had been involved in the destruction and withholding of evidence, and that the Tribunal would see the deletions, but as he had “only 20 pages”, he had given a sample. He submitted that the witness statement of VI and the transcript of the video call will be very informative about how the business is conducting their arrangements and dealing with this litigation. He commented that the respondent was acting with the help of Mr Williams, and that “had he been a lawyer the repercussions would be more serious”.
44. Mr Kurtyan said that the failure to disclose the key evidence was also pertinent to the case. He said the case is about control. He said that the strike out rule was designed to protect issues that have arisen in this case.
45. He submitted that as the witnesses have deleted messages, there is no way of knowing what was going on. He said that it affects the credibility of evidence. Mr Kurtyan said that as the respondent had deleted messages there was no way of knowing what was going on, and that the witnesses “cannot be trusted to show up”.
46. Mr Kurtyan submitted that the “fairness of the process has been affected very severely” He said that upon hearing evidence, it would be very clear that what the respondents had done was “not accidental, they did this on purpose”. He added, “I am a Romanian, I know the way things work back in the old country, ex-communists, I did not expect Mr Williams to be such a Romanian so to speak”.
47. He said that the response should be struck out due to the witness interference, disclosure, and pattern of misleading explanations. He said strike out was warranted, and he understood that the bar was very high.

Response to submissions and strike-out application

48. Mr Williams responded to the submissions made. He stated that he would take the Tribunal to various documents to show that the respondent had not deleted messages or interfered with evidence.
49. He accepted that there had been an issue with the Mimecast link, however the documents had been resent to the claimant. He said that both parties had disclosure obligations and there had been an application to the Tribunal Respondent to request an extension of time.
50. Mr Williams set out that there had been PDF copies of messages with English translations sent or disclosed in February 2025, and a full transcript of all messages from 2019 to 2024 disclosed on 13 February 2025.

51. There was a 377 page document (“the WhatsApp message bundle”), which was provided to Tribunal for the July hearing. The claimant said that some messages had been deleted and therefore the respondent had agreed to use the claimant’s messages. That said, Mr Williams noted that the messages were obviously in the claimant’s possession and ought to have been disclosed during the relevant process.
52. Mr Williams said that he had looked at the sample messages referred to and they were not deleted. Those messages were in fact in the 377 page document, not deleted. Mr Williams set out the relevant page numbers: the messages about the Broadway project and delivery of rope are at page 135, a key page relating to the work at the Phillimores, Academy Gardens on page 134, Great Charles Street Birmingham page 76, mastic gun on page 50, harnesses on page 138, and others at pages 45, 85 and 86. These were messages including the ones set out as deleted in the written application (paragraphs 1.1 on page 63 of the hearing bundle, 2.1 on page 64, 4.1 on page 66 and 5.1 on page 67).
53. It was submitted that all the messages said to have been deleted were in fact in the disclosure sent to the claimant. Mr Williams said that a complete transcript was sent to the claimant to enable them “to have certainty that everything we had, he got”. Mr Williams stated that it was possible that “the odd message” had been deleted. By way of example, he stated that there were messages where “OK thanks Florentin” appear to have been deleted in streams that predate the claim and are not material to the matters to be determine.
54. He stated that the claimant was emailed in February 2025 to inform him that his phone had been stolen and as a result it was possible that not all messages had been retrieved from the cloud.
55. In answer to the submission made that the respondent had withheld documents, he said that they had provided “that which they received, and they can do no more”. Mr Williams said that sometimes technology fails, however he had never sent false links.
56. Again, Mr Williams said that there had been no refusal to provide documents. The respondent had put all documents that the claimant asked to be included into a bundle which was sent to the claimant on 4 March 2025.
57. Mr Williams said that an index was sent on 21 January 2025 by email explaining that Mimecast had to be used because of the file size. He had emailed the claimant on 13 February 2025 asking for confirmation that the claimant had received the WhatsApp message bundle. The claimant confirmed receipt on 22 February at 10.32am.
58. When the claimant emailed saying that there were missing documents, Mr Williams sent another link. When the claimant had requested things be resent on 24 February, they were resent 2 days later. The respondent had never seen any mention of documents being corrupted before they received the claimant’s witness statement. He said that the claimant had requested many documents which were not relevant and some requests were disproportionate, such as the RAMS, which were 7000 pages. Mr Williams said that as a compromise, some samples from the claimant were included.

59. Mr Williams said that there had been correspondence between the parties about which documents should be added to bundle. The respondent accepted that many documents were relevant and agreed to include them. However, some related to commercially sensitive issues and therefore the respondent had said that the correct approach was for the claimant to make a disclosure request to the Tribunal. The requests to add to the bundle of documents continued into April 2025.
60. Mr Williams stated that no documents had been forged or altered, and the accusations being made by the claimant were untrue. He said that there was no evidence provided in support of those accusations, other than Mr Kurtyan suggesting that it would become clear when witnesses were cross-examined.
61. Further, Mr Williams said that the claimant had misrepresented what was said in the email sent by respondent's representative on 5 April 2025 by omitting most of the text. For example, the email included mention that once the documents to be included in the bundle were agreed, a final bundle will be produced in accordance with the CMO. It also spoke about any additional documents being forwarded upon receipt and the index being updated. The email also referred to the time involved in producing a bundle and that the draft bundle with index would be produced once the disclosure process had been completed which is entirely usual.
62. Mr Williams said that the draft bundle contained in excess of 200 documents, and that the index alone ran to 14 pages. He stated that it would not have been possible to have so many documents if the allegations about withholding of documents were correct.
63. Mr Williams then addressed the Tribunal about the complaints made about what Mr Kurtyan has described as witness interference. He said that there had been no such thing. He submitted that if individuals do not want to be contacted by the claimant they are entitled to say so. He added that a route was provided to allow the claimant to correspond with people, and stated that "it is a matter of fact that when Mr K wanted to contact various individuals about the July hearing, his message was forwarded and responses were sent back".
64. Mr Williams said that nothing that was sent to the individuals concerned was untrue, nor was it incorrect or in any way designed to deter them from giving evidence. He said that no evidence has been provided about anyone being instructed not to give evidence or of coercion, because nothing of the kind happened. The only evidence of a threat being made is in the transcript of the WhatsApp recording in paragraphs 3 and 4, page 101 of the bundle, where the claimant appears to threaten Mr Isac with an arrest warrant if a witness order is made and he fails to attend.
65. Mr Williams stated that the suggestion made by Mr Kurtyan that a fair trial is no longer possible is incorrect. He said that there is already a draft bundle, which can be revised in accordance with any decision made by the Tribunal on the relevance of certain documents and their disclosure by the respondent.

66. He added that he had no problem with this, or indeed Mr Kurtyan's request for messages between Mr Favil and Mr Williams and the individuals to whom he refers being provided, subject to the usual proviso in respect of privileged correspondence. Mr Williams stated that they had "nothing to hide". He stated that none of the three witnesses attending today, for example, are in any way compromised, nor would be any others who either chose to give evidence or who are summoned by a witness order notwithstanding the fact that Mr Kurtyan would not be able to cross-examine his own witnesses.
67. Mr Williams stated that the bar for strike out is indeed set high, and for good reason. He submitted that nothing has been advanced today to show that the response should be struck out.
68. Finally, Mr Williams stated that on a personal note he had registered his objection to Mr Kurtyan's description of him towards the end of his remarks. Mr Williams said that it was "inconceivable that [he] should behave as he has suggested". He stated that "it is respectfully submitted that to allege otherwise is scandalous" adding that he had been undertaking work in the Employment Tribunals for many years and that to act as Mr Kurtyan suggested would be "a violation of everything that I stand for". He therefore asked that he has "the good grace to withdraw those remarks".
69. Both parties had made lengthy submissions. I stated that I would hear short responses by each side.

Claimant's further submissions

70. Mr Kurtyan then stated that he had witnesses present and wanted confirmation that this was not be an evidentiary hearing. I confirmed that the application to strike out was to be dealt with on submissions.
71. He stated that he was only allowed to provide 20 pages of evidence, which he said were pages 116 to 133 of the bundle. Mr Kurtyan said that he rejected what the respondent had said as the page numbers he provided did not make sense. He submitted that the only thing the Tribunal can look at was the bundle for today's hearing and that further or new evidence was not permitted in the preliminary hearing. He repeated that he had made requests for the tribunal to read "the big bundle", and renewed that request.
72. Mr Kurtyan said that the evidence that messages were deleted is in the bundle. He stated that on page 117 the "proper messages" were on the left, and the "doctored version provided by respondent" on the right. He said that the message about site instructions and locations were deleted, as they show the control issue, which is the major claim he is fighting for.
73. He submitted that a further example was on page 118, where something had not been redacted for sensitivity, the deletion was the site instructions. He stated that the messages are not ever going to be provided as they are gone for good. There are omitted and undisclosed message. Further, he submitted that the deletions were selective, not random and not done by mistake.

74. Mr Kurtyan stated that the respondent had “used his little finger and had done exactly what he needed to do”. He said that there were 500 messages missing, as he had asked his client to count them. He stated that the messages in the bundle was only a sample because of the limit imposed by the Judge in the CMO.
75. He said that there was the same pattern in all messages, as the deleted messages are all about sites, tools etc. Mr Kurtyan said that “to demonstrate intentionality” you can see which messages were kept, the respondent’s submission that the deletions were a mistake or done to clean the phone does not hold water, as one message was left which was seemingly unfavourable to claimant, which says “your occasion to rebuild relationship with others”.
76. Mr Kurtyan stated that the screen captures on the right of the documents were provided as the originals, and are true. However, he said that these are surreptitiously deleted so someone without a copy would never know, and added that it “gets to the point where the doctoring becomes more obvious”. He said that the respondent had sold this version to us as the original, “this is the true copy, we swear by it, this is complete and worthy to be in bundle as true and unadulterated evidence”. He noted that all the messages are about employment status, all were missing from their disclosure or presented as true copies of the original.
77. Mr Kurtyan then went through pages 121 onwards of the bundle. In respect of the messages on page 121, he said that the phone belonged to David Yates, another employee in managerial position. He said that the same passages, same type of messages had been deleted, and the remaining messages are innocuous. He opined that the David Yates’ phone shows that the stolen phone narrative is just a rouse, same pattern of deletion as though the same thief rummaged through David Yates’ phone and deleted similar messages.
78. Mr Kurtyan turned to pages 123 and 124 which he said are a printout from software called iMazing, which show mass deletions. He stated that the respondent had downloaded documents to enable editing, and then presented it as evidence. The messages deleted all show control. Mr Kurtyan said that all of these were presented as originals, perfect documents for court.
79. Mr Kurtyan said that these messages were “deleted manually, after the fact, after printed, extracted from phone”. He said that it is a cheap software application and that this establishes forgery here.
80. He then moved onto page 125, where there were further deletions made about holiday approval, for example.
81. Mr Kurtyan said that there was a further example of forgery on page 126, screenshots from WhatsApp. The left side of the page are screenshots of messages between the claimant and VI. He submitted that those blocks were deleted manually as WhatsApp has a watermark in the background, which you can see if you zoom in. Those were deleted on the left side. The right side shows that all those messages were deleted, and all were favourable to the claimant.

82. He stated that the claimant contacted witnesses once, all were his former colleagues, and all came back with the same response, like a template answer. That template was provided by Mr Williams. Mr Kurtyan took the Tribunal to page 130 and a message referring to Mr Williams. He stated, "I can see the hand of Mr Williams here, how he speaks, very administrative and very terse". He then said that on page 130 there was the same refrain with Adriana Stankova.
83. Mr Kurtyan stated that it was "very bold" of Mr Williams to send this email on page 131, saying to the witnesses that they should only talk to him, should any witness reach out, say no and contact him. He said that Mr Williams had made himself their representative and was stepping out of his role and giving legal advice to the witnesses. He said Mr Williams had given them a template, and that was "interference and abuse of process". He submitted that telling clients not to testify, telling them that they can refuse to cooperate and do not have to talk to the judge or court, or other party unless they force you to do it, is not ethical behaviour.
84. Mr Kurtyan asked therefore how there could be a fair hearing when "these people will never show up", as they are under control of the respondent and if they did show up, they would lose their jobs. He said that Mr Williams had said that the claimant threatened him with arrest, which was a misrepresentation of the situation, but the claimant said this could be criminal.
85. Mr Kurtyan stated that "up to a point it could be", but that he was not the one to say it. However, he did go on to say that the deliberate deletions, the iMazing file is a forgery, and that he did not know how the court can make a determination without witnesses and without the proof namely the texts.
86. Finally, he said that the page numbers Mr Williams had given he could not see and therefore could not respond. He said that the respondent was trying to introduce new evidence, and that he did not trust that they even existed at this point.
87. The Tribunal adjourned overnight. I asked parties to consider the other applications overnight.

Day two of Hearing

88. There was a slight delay on the morning of day two as there was an issue with recording the hearing. However, once recording was enabled, I invited Mr Williams to respond to Mr Kurtyan's further submissions.

Respondent's further submissions

89. Mr Williams started by stating that it was disingenuous to suggest, as Mr Kurtyan had done, that the WhatsApp bundle did not exist.
90. He stated that he had sent the claimant and Mr Kurtyan copies of that bundle on more than one occasion, and indeed the iMazing images were obtained from

that document. Mr Williams said that there was no other way for Mr Kurtyan to have obtained those messages.

91. Mr Williams stated that messages had not been deleted as they were within the WhatsApp bundle, which Mr Williams referred to as the transcript during his submissions.
92. Mr Williams said that pages 123 and 124 of the hearing bundle showed the messages with time stamps. He said that the new formatting for Apple users is unique to the iPhone text extraction using the software, which matches word for word and line for line and proves that the claimant had the file, annotated it and submitted it himself. In order to do so, he had to have had access to the full transcript.
93. Mr Williams stated that the iMazing application does not mix conversations. If there were private messages between the claimant and DP, that is where they would appear. Group messages appear in their own group transcript, which show multiple participant names. He stated that those messages never appear inside a one-to-one chat transcript. He said therefore that any messages that do not appear in the private chat are in the group messages and are correctly identified as such in the export.
94. He also stated that only the device holder could generate the transcript, and so Mr Kurtyan could not have reproduced those sets of messages.
95. Mr Williams submitted that nothing had been hidden or deleted by the respondent.
96. Further, the respondent had not accessed the claimant's device in order to delete messages or otherwise. The screenshots could not have been doctored.
97. He stated that if the respondent had been trying to hide or delete messages, he would not have sent the transcript that he did send on 13 February. That transcript contains all the messages, albeit they are in different folders as they are grouped into the correct group or individual messages. He stated that "Mr Kurtyan had been comparing oranges to apples, but the entire fruit bowl can be found in the full download".
98. Mr Williams said that Mr Kurtyan said some messages had been deleted but he did not know when. It would not be an issue if messages had been deleted before the respondent was aware of the claim, and said that it appeared to have been a presumption that it was done before the Tribunal process started. He also stated that he had not contended the clean-up of the phone was done with a click of the button.
99. In respect of the email sent by the respondent to potential witnesses Mr Williams stated that the content was not controversial. When the claimant wanted to correspond with individuals, that was passed on and responses were sent back. However, he stated that Mr Kurtyan had misrepresented what was said in the message. It had not instructed people not to speak to the Judge or Tribunal.

100. Mr Williams stated that the suggestion made on behalf of the claimant that any witnesses would lose their jobs did not hold water, as the respondent had a good reason to have a grievance against VI, but no action had been taken. He said that the individuals were contractors not employees.
101. Mr Williams also stated that Mr Kurtyan's comments were speculative and without foundation, and that he only represented the respondent and no one else. He stated that he had not instructed anyone not to attend or not to comply with any Tribunal order.

The WhatsApp Bundle

102. Given that both representatives had spoken at length during submissions about evidence in the larger bundle, namely the WhatsApp messages, I decided that I would consider those messages. I therefore requested a stand-alone bundle of those messages, and repeated that I would not consider any other evidence in the larger bundle.
103. I was therefore provided with the bundle of 377 pages.
104. The first 54 pages were messages between the claimant and the respondent.
105. The following 201 pages were group messages. Of note, pages 2 to 20 inclusive of that bundle were between the respondent, Vitali Irata3 (as saved into the relevant device) and the claimant. Page 24 showed a group with the respondent, David Yates and Vitali Irata3 and the claimant.
106. There were other larger groups including City MPS and others.
107. All of the group messages were to do with work. They set out the time of arrival and location of the job, usually sent the day before. There are instructions such as "Vitali pls make sure that ops read&sign the RAMS on site", "Catalin plz deliver 2 x 200meter ropes, impact and tech bit 8mm" and give the name and number of the site manager (page 87 of 377). The messages also give the contact details of all the individuals attending the site.
108. All messages are signed off with "Thx, CityAbseilling" or "Thx, Dorin-CityAbseilling".
109. I invited parties to make short submissions only after I had considered the document. I stated that the submissions must only relate to this document, and not repeat earlier submissions, which I had noted.

Claimant's submissions relating to the WhatsApp Bundle

110. On behalf of the claimant, Mr Kurtyan maintained his position that the respondent had deliberately deleted parts of the private one-to-one messages and then tried to show the group documents as the missing messages. However, he stated that it was not accidental, and that the selection and deletion of the evidence was private and targeted. Only the claimant's messages had been removed, not those of other workers. Other workers' private threads survived, and group messages survived.

111. Mr Kurtyan stated that it was conscious misrepresentation. He stated that the respondent, having deleted the private thread, then took screenshots of whatever remained and sent those to the claimant as if it were the full message history.
112. He said that when faced with the application to strike out for destruction of evidence, the respondent tried to remedy the situation by sending the iMazing document. He said they tried to substitute missing messages with group messages and the respondent was trying to mislead the Tribunal into believing that disclosure was complete.
113. He said the claimant never saw group messages, he only saw private messages. Mr Kurtyan said that this was “knowingly misleading, deliberate reconstruction of the history of texts”, and that the pattern was unmistakable, as only private SMSs to the claimant were destroyed selectively.
114. I asked how the claimant knew that the deletion they alleged was selective, and whether Mr Kurtyan had independent knowledge of other messages that were complete. He stated that he only had the disclosures, so cannot say that he did not delete messages to others and the groups. He then pointed to Mr Williams’ submissions made yesterday, citing the various page numbers such as the Charles Street message on page 121 which the claimant said was deleted, Mr Kurtyan said that Mr Williams made an effort to find it in a different group which is the “Vitalia3 group”.
115. Mr Kurtyan continued to say that another message which he had not said was deleted but only omitted in February when they first mentioned strike out was found in the disclosure by Mr Williams. However, he said it was disclosed after the fact, and had been omitted before. It was only disclosed, he said, on 23 February, after they had filed for strike out.
116. Mr Kurtyan then stated that the respondent had performed multiple deletions, some before 17 January when the screenshots were provided, but that the deletion process continued after January. He stated that the 377 page document does not contain all the messages in the private thread, and that he had proof of that but would need to send more documents to the Tribunal.
117. I raised further concerns as to the timing. There were further applications to be dealt with during this hearing, which was listed for two days. There remained an application to amend, an application for witness orders, and an application for costs all to be heard.
118. Mr Kurtyan said that his final submission was that the respondent had attempted to say that disclosure was complete when it was not, there had been a deliberate cover up, intentional deletion and then the respondent had tried to substitute identical broadcast messages.

Respondent's submissions relating to the WhatsApp Bundle

119. Mr Williams said that the respondent had identified a few messages that were not in the WhatsApp bundle. He said that there were 42 messages in the document provided by the claimant, which are at pages 116 to 127 of the hearing bundle. Mr Williams found one message on page 118 which is not in the WhatsApp bundle. He said that it had not been exported from Mr Parvel's phone and that they would provide it as he still had it on his phone.
120. He stated that messages on pages 121 and 122 are messages from City Construct who are not a party to the proceedings, but some sample messages were provided to show that the claimant had worked elsewhere. Those messages had been provided by the person who ran that business.
121. Mr Williams said that the message on page 125 could not be found, but was from June 2022, 2 years before the claim and would not be material. The messages on page 126 were taken from Mr Isac's phone, not the respondent's, and so the messages were deleted by Mr Isac. The messages on page 127 were from City Construct, and therefore not in the possession of the respondent. The claimant obviously had those messages, but the respondent did not have them.
122. Mr Williams again submitted that the respondent had not deleted or substituted any relevant messages. The first 54 pages are exchanges between the claimant and Mr Parvel, so private messages. The respondent had wanted to ensure that everything was disclosed to the claimant which is why they had undertaken the iMazing process.
123. Mr Williams said that there had been no subterfuge. Some of the "missing" messages were group messages and therefore could be seen in the group folder.

Strike out application: the legal test

124. In respect of the relevant applications, the Employment Tribunals Rules of Procedure 2024 set out the relevant tests.
125. Rule 38 reads as follows:
 - (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 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 the 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).
126. The power under rule 38 should be exercised in appropriate cases, as the system should not be filled up with cases which are vexatious, or hopeless.
127. The Tribunal in certain cases will be able to strike out a claim or response, or part of a claim or response, where there is no reasonable prospect of success in respect of a contested issue. Given that the lead authorities repeatedly confirm that the Tribunal should be exceedingly cautious in striking out cases, one example where the Tribunal could exercise its discretion is where there is contemporaneous documentation that directly contradicts a pleaded case.
128. The strike out provisions should be used sparingly where the claims are highly fact-specific.
129. A claim or response can be struck out in full, or in part.
130. The application made by the claimant was that the response should be struck out on the following grounds:
- No reasonable prospect of success
 - The conduct of the respondent in the proceedings has been scandalous, unreasonable or vexatious,
 - The manner in which the proceedings have been conducted is an abuse of the tribunals process or is otherwise likely to disrupt the fair hearing of the claim
 - There has been non-compliance with any Tribunal order or practice direction.
131. If the response is struck out in full, the case is treated as if no defence had been presented and the respondent is therefore liable to have a default judgment issued against them. This is obviously a severe sanction, which is why it is used sparingly.
132. I must first consider whether any of the grounds set out in rule 38(1) as set out above have been established. In this case, the claimant relies on rule 38(1)(a). If there is a ground, I then must decide whether or not I should exercise my discretion to order strike-out: it is not automatic if a ground is established.
133. I have regard to the overriding objective set out in rule 3 of the Tribunal Rules 2024. This rule sets out that the Tribunal must deal with cases fairly and justly. This includes:
- (a) ensuring parties are on an equal footing
 - (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues,
 - (c) avoiding unnecessary formality and seeking flexibility in the proceedings,
 - (d) avoiding delay, so far as is compatible with proper consideration of the issues, and
 - (e) saving expense.

134. The word scandalous in the context of an application to strike out should not be given its colloquial meaning of signifying something is shocking, but means irrelevant and abusive of the other side (*Bennett v Southwark London Borough Council* 2002 ICE 881, CA).
135. A 'vexatious' claim or defence has been described as one that is pursued not with the expectation of success but to harass the other side or out of some improper motive, but also includes any conduct that is an abuse of process.
136. LCJ Bingham described the hallmark of a vexatious proceeding is that it has "little or no basis in law (or at least no discernible basis); that whatever the intention of the proceeding may be its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and that it involves an abuse of the power of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process" (*Attorney General v Baker* 2000 1 FLR 759, QBD (Div Crt)).
137. To strike out a response for unreasonable conduct, a tribunal must be satisfied that the conduct involved a deliberate and persistent disregard for procedural steps or has made a fair trial impossible. Even if the tribunal were to find either of those grounds, the striking out must be a proportionate response (*Blockbuster Entertainment Ltd v James* 2006 IRLR 630, CA).

Findings

Scandalous or vexatious

138. Within his written and oral argument, Mr Kurtyan repeatedly submitted that the respondent had engaged in "deliberate, egregious, and prejudicial spoilation of evidence" (including at part one of the written application for strike out, at pages 59 onwards of the hearing bundle).
139. He stated that the respondent had "intentionally altered, concealed, and withheld material text message exchanges, thereby seeking to mislead the Tribunal and obscure facts that are critical to the Claimant's case".
140. Mr Kurtyan was clear in his submissions. He said that the respondent's conduct was not oversight or accidental, it was "a deliberate act of falsification and suppression aimed at distorting the evidential record" (page 59 of the bundle).
141. On the face of it, the respondent has shown where the 'missing' messages are, and given an explanation, namely that they were in different folders. Mr Williams accepted that there were shortcomings in terms of service or provision of documents, as links do expire. However, given the volume of documents he had to send, a link was the only real option.
142. The pro forma template document which was drafted by Mr Williams and sent to the potential witnesses was the subject of a number of submissions by Mr Kurtyan. The use of this document does not amount to an abuse of process. A potential witness can choose to use the suggested template, or not. The

language is not threatening. Mr Williams has agreed to pass on any letters from potential witnesses to the claimant. That conduct is in accordance with the overriding objective, which applies to the parties and to the Tribunal.

143. I do not find that the respondent has acted in any way that is scandalous or vexatious.

Prospect of success

144. On the face of the documents, in respect of the claims put forward, there is an argument on each side, with evidence potentially supporting work within an employee/ employer relationship, or with the claimant as a contractor. The Tribunal deals with such arguments on a regular basis, and is well equipped to do so.
145. The Claimant has made claims in respect of unfair dismissal, a statutory redundancy payment, statutory notice pay, arrears of pay, other payments, and he alleges that the Respondent failed to provide him with written particulars of employment.
146. The claims are made on the basis that the claimant was an employee and therefore entitled to the benefits and protections associated with such employment. The respondent's case is that the claimant was engaged as an independent contractor, on a job-by-job basis. These positions can be properly argued at the final hearing, with each party providing relevant evidence in support of their respective positions. This is a fact-finding exercise and again, strike out is rarely appropriate in such cases.
147. It therefore cannot be said that the response has no reasonable prospect of success.

Non-compliance with any of the Rules or with an order of the Tribunal

148. Mr Kurtyan made complaints about disclosure. He stated that the respondent had "persistently failed to comply with disclosure obligations". Further he stated that the respondent had "repeatedly delayed compliance through misleading and obstructive tactics, including providing a false Mimecast download link that lacked key documents" (paragraph 3 of the written application, repeated in argument).
149. I do not accept that the respondent has persistently failed to comply with disclosure obligations, nor that the respondent has engaged in misleading or obstructive tactics. I accept the explanations made by Mr Williams as set out above. It appears to me that Mr Williams is doing his best to deal with the various lengthy requests and applications being made by the claimant. As he stated during the course of submissions, he can only provide that which his client has provided him.
150. In terms of the respondent himself, rather than his representative, he provided his phone download via the application iMazing, in order to provide full exchanges. That application separates messages into private messages and group messages. I have looked at a small selection, which are detailed above

and where the subject of extensive submissions. The messages which give details of the place of work, contact numbers and the job itself, appear to be saved in the various different group message folders. I looked at a selection in order to satisfy myself as the claimant placed significant weight on this aspect, and accused the respondent of wilfully manipulating and deleting messages.

151. In light of the documents provided to me, I am not satisfied that the respondent has engaged in any manipulation of the evidence. The respondent appears to have provided a full download. It is accepted that some text messages have been manually deleted prior to the download. Some of those deleted messages were deleted before the claim was made, and therefore were not done to mislead the tribunal during the course of proceedings.
152. It appears that disclosure has now been completed, or is near completion. I am confident that the parties will be able to comply with the directions set out below in respect of agreeing documents for the final hearing, and the exchange of witness statements.

The manner in which the proceedings have been conducted by or on behalf of the respondent has been scandalous, unreasonable or vexatious

153. I do not consider the way in which the respondent is conducting the proceedings is in any way scandalous, unreasonable or vexatious. To strike out a response for unreasonable conduct, a tribunal must be satisfied that the conduct involved a deliberate and persistent disregard for procedural steps or has made a fair trial impossible. Even if the tribunal were to find either of those grounds, the striking out must be a proportionate response (*Blockbuster Entertainment Ltd v James 2006 IRLR 630, CA*).
154. In terms of conduct, it might well be said that the way in which the claimant's representative is conducting the proceedings has been scandalous, unreasonable or vexatious. Mr Kurtyan made serious allegations against Mr Williams during the course of his submissions during this two day hearing. Those allegations were repeated, and not withdrawn when Mr Williams asked him to consider doing so.
155. Of course, in order to strike out a claim or response on the basis of the conduct of the representative of either party, it is not simply the representative's conduct that needs to be characterised as scandalous, but the way in which he or she is conducting the proceedings on behalf of his or her client. The tribunal would need to consider the way in which the proceedings have been conducted, how far that is attributable to the relevant party and the significance of the 'scandalous' conduct (see *Bennett v Southwark London Borough Council 2002 ICR 881, CA*). Of course, even if it was found that a representative had acted in that way, the party itself could disassociate itself from what their representative had done. The tribunal would also have to be satisfied that striking out the claim or response was justified and proportionate.
156. Within the documents that I have considered, there is no evidence to suggest that Mr Williams has conducted this case in any way that amounts to an abuse of the process. There is no evidence to suggest that he has manipulated evidence in the way suggested, repeatedly, by Mr Kurtyan.

157. Mr Kurtyan made derogatory assertions about Mr Williams both in a professional and personal capacity, in my view. The claimant should consider this aspect, as parties will have to deal with each other in respect of service of documents and the preparation of bundles. Further, they will have to deal with each other in a courteous and proper manner at the final hearing.
158. Notwithstanding the above, a fair trial is possible. Whilst the respondent previously put forward an application to strike out the claim, it was later withdrawn. The Tribunal can of its own volition consider such matters. However, even if a formal finding was made as to the conduct of Mr Kurtyan in his role of assisting the claimant, a fair trial remains possible and therefore this is not a case where the claim should be struck out. I add this observation to assist the parties. It was not an application before me, and therefore does not form part of any formal ruling.

The response not being actively pursued

159. Within the written submissions it was argued that the response should be struck out on the ground that it was not being actively pursued. This was not put forward in oral argument. However, this is not a case where the respondent has not actively pursued their defence. The respondent has provided documents, responded to emails and applications, and attended hearings.

Fair trial

160. It is possible to have a fair trial in this case. As set out above, this is a fact-finding exercise where the tribunal will need to hear evidence, review the relevant text messages and other documentary evidence, and hear submissions as to the interpretation of that evidence.
161. On the face of the documents, in respect of the claims put forward, there is an argument on each side, with evidence potentially supporting work within an employee/ employer relationship, or with the claimant as a contractor. The Tribunal deals with such arguments on a regular basis, and is well equipped to do so.
162. The tribunal will not be assisted in the final hearing by either party seeking to re-open the arguments heard at this preliminary hearing. Parties should focus on preparing a bundle of relevant documents, and witness statements, and their submissions on that evidence.

Conclusion

163. There is no ground upon which this response should be struck out.
164. I therefore refuse the claimant's application.
165. Applications for strike-out are time consuming, and lead to additional costs. In my judgment, this application should not have been made, as it had no realistic prospect of success.

166. A fair trial is possible, and the claim is almost ready to be heard, as disclosure has been completed.
167. I remind parties that they and their representatives must assist the Tribunal to further the overriding objective (as per Rule 3(4)(a)) and must co-operate generally with each other and with the Tribunal (as per Rule 3(4)(b)).

.....
Employment Judge Beckett
Dated: 22 December 2025

Date sent to the parties:
3 February 2026

For the Tribunal Office