



EMPLOYMENT TRIBUNALS

Claimant: Elle Grace

Respondent: Clubspark Group Ltd

Heard at: Liverpool

On: 16 September 2025

Before: Employment Judge Ainscough

REPRESENTATION:

Claimant: Not in attendance

Respondent: Mr Williams - Counsel

JUDGMENT having been sent to the parties on **27 October 2025** and written reasons having been requested on 7 November 2025 in accordance with Rule 60 of the Employment Tribunals Rules of Procedure 2024 and referred to Employment Judge Ainscough on 3 December 2025, the following reasons are provided:

REASONS

Introduction

1. The claimant pursues complaints of direct race discrimination, harassment related to race, victimisation and breach of contract.
2. On 14 September 2024 the claimant began ACAS Early Conciliation. On 18 October 2024 the claimant received the Early Conciliation Certificate. On the same date the claimant submitted the ET1 form with an attached document.
3. The Tribunal acknowledged the claim and listed the matter for a case management preliminary hearing on 8 May 2025.
4. On 20 November 2024 the respondent submitted a response. On 28 January 2025 the respondent made an application to strike out the claim or for a deposit order. As a result, the Tribunal listed the matter for a preliminary

hearing on 22 May 2025. The case management preliminary hearing listed on 8 May 2025 was cancelled.

5. As a result of the claimant's non-attendance at the preliminary hearing on 22 May 2025, the Tribunal relisted the preliminary hearing to determine the respondent's application and any subsequent application for costs incurred at the first preliminary hearing.
6. On 17 June 2025 the respondent made an application for costs.
7. On 12 September 2025 the claimant informed the Tribunal that she would not be in attendance at this hearing because the proceedings were flawed and in particular, the respondent had been sent a defective copy of the ET1 form and attachment.
8. As a result of the claimant's contention that the respondent had received a defective copy of the ET1 form and attachment, at the outset of the hearing, the Tribunal provided the respondent with a full copy of the documents and allowed the respondent's representative time to consider the content.
9. Following perusal of that document, the respondent's representative confirmed that the respondent maintained the content of the response and the applications for strike out/deposit order and costs.
10. In light of the claimant's notification that she would not be in attendance at the hearing, and any defect in the service of the ET1 form having been rectified, the Tribunal determined that it should proceed with the hearing in accordance with rule 47 of the Employment Tribunal Procedure Rules 2024 and the overriding objective.

Respondent's applications

11. On 28 January 2025 the respondent made an application to strike out the claim or for a deposit order.
12. The basis of the application was in accordance with rule 38 of the Employment Tribunal Procedure Rules 2024. The grounds on which the respondent relied were as follows:
 - (1) That the claim had no reasonable prospect of success.
 - (2) That the manner in which the proceedings had been conducted was scandalous, unreasonable or vexatious.
13. The respondent also made an application for costs in accordance with rule 75 of the Employment Tribunal Procedure Rules 2024. The respondent contended that the claimant had acted vexatiously, abusively, disruptively or otherwise unreasonably; that the hearing had been postponed less than 7 days before the date of the hearing and that the claimant had breached an order of the Tribunal.

Relevant legal principles

14. Rule 38(1)-(2) of the Employment Tribunal Rules of Procedure 2024 states that:

“(1) The Tribunal may, on its own initiative or on the application of a party, strike out all or part of a claim, response or reply on any of the following grounds—

(a) that it is scandalous or vexatious or has no reasonable prospect of success;

(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;

(c) for non-compliance with any of these Rules or with an order of the Tribunal;

(d) that it has not been actively pursued;

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim, response or reply (or the part to be struck out).

(2) A claim, response or reply may not be struck out unless the party advancing it has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.”

15. In the case of **Anyanwu v South Bank Student Union (2001) ICR 391** the House of Lords determined that discrimination claims should only be struck out in the most obvious of cases because they are fact sensitive and require a full examination of the facts before a determination can be reached

16. Rule 40 (1)-(4) states that:

“(1) Where at a preliminary hearing the Tribunal considers that any specific allegation or argument in a claim, response or reply has little reasonable prospect of success, it may make an order requiring a party (“the depositor”) to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument (“a deposit order”).

(2) The Tribunal must make reasonable enquiries into the depositor’s ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.

(3) The Tribunal’s reasons for making the deposit order must be provided with the order and the depositor must be notified about the potential consequences of the order.

(4) If the depositor fails to pay the deposit by the date specified by the deposit order, the Tribunal must strike out the specific allegation or argument to which the deposit order relates.”

17. Rule 74(2) of the Employment Tribunal Rules of Procedure 2024 states:

“When a costs order or a preparation time order may or shall be made

The Tribunal must consider making a costs order or a preparation time order, where it considers that –

(a) a party (or that party’s representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the

proceedings, or part of it, or the way that the proceedings, or part of it, have been conducted...or....

- (c) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which the hearing begins.”

18. Rule 74(3) states that the Tribunal may also make a costs order if a party has been in breach of an order.

19. Rule 75 states:

“Procedure

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

(2) The Tribunal must not make a costs order or a preparation time order against a party unless that party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order).”

20. Rule 82 provides the Tribunal can have regard to the paying party’s ability to pay, but the Tribunal is not obliged to take this into account when determining whether to make a costs order.

21. In **Lodwick v Southwark London Borough Council 2004 ICR 884, CA**, the Court of Appeal determined that at both stages of the Tribunal’s discretion to make a costs award, the fundamental principle that costs awards are compensatory not punitive, must be observed.

22. In **AQ Ltd v Holden (2012) IRLR 648, EAT**, the Employment Appeals Tribunal determined that a litigant in person should not be judged by the same standards as a professional representative.

23. In **Scott v Russell 2013 EWCA Civ 1432, CA**, the Court of Appeal cited the definition of vexatious determined in **Attorney General v Barker 2000 1 FLR 759, QBD (Div Ct)** as:

‘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 proceedings 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 process 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’

24. In **Yerrakalva v Barnsley Metropolitan Borough Council and others (2012) ICR 420, CA** the same court said a Tribunal must look at the totality of the circumstances and reiterated that costs in the Employment Tribunal are the exception rather than the rule.

Application for strike out/deposit order

Prospects of success

25. The respondent contended that the claim has no reasonable prospect of success. The Tribunal was reminded to take the claimant's pleaded facts at their highest when considering this application. The Tribunal has taken time to identify the issues from the ET1 form, the attachment and the additional documents sent to the Tribunal by the claimant. The Tribunal was hampered in this task because the claimant chose not to attend the hearing.
26. The Tribunal is also conscious that the claimant is a litigant in person. The Tribunal has considered the case of **Cox v Adecco and others UKEAT/0339/19/AT(V)** as to how to approach pleadings drafted by litigants in person. If facts are disputed, a strike out of the claim is an unlikely outcome.

(a) Direct race discrimination/harassment related to race complaints

27. Discrimination cases are fact sensitive. The facts of any discrimination complaint should be fully examined unless it is obvious that the claim has no reasonable prospect of success. Quite often there needs to be an examination of the facts to see whether inferences of discriminatory acts can be drawn.
28. In response to the respondent's response to the claim, the claimant stated that the respondent didn't follow the normal procedure in her case. This assertion poses the question why the respondent didn't follow the normal procedure and does it need further examination?
29. The respondent contended that the claimant has only pleaded that a difference in protected characteristics is the reason for the difference in treatment. The respondent submits there is, therefore, no prima facie case.
30. However, the Tribunal has taken the pleaded facts of the claimant's claim at their highest and they require examination to establish whether any inferences should be drawn for the difference in treatment. The respondent was unable to take the Tribunal to any documents which suggest that the claimant's claim has no reasonable prospects of success. The respondent's application to strike out these complaints is unsuccessful and is dismissed.
31. The non-attendance of the claimant means that the Tribunal is unable to ask the claimant why she attributes the difference in treatment to a difference in protected characteristics. The claimant's pleaded case simply sets out facts of difference in treatment, and the claimant asserts that the reason for that difference is her race. On this basis, without the claimant setting out that there is something more than just a difference in race between her and the actual/hypothetical comparator or explaining why the difference in treatment is related to race, the claim has little reasonable prospect of success.
32. As a result, the Tribunal will make deposit orders for the complaints of direct race discrimination and harassment related to race. In making these orders, the Tribunal has considered the claimant's means and her income. The

Tribunal notes that whilst the claimant receives £900 in universal credit, the claimant's outgoings suggest that the claimant is in receipt of other income. The claimant is therefore required to pay a £100 deposit in order to continue with the direct race discrimination complaint and a £100 deposit in order to continue with the harassment related to race complaint.

(b)Victimisation complaint

33. The claimant also pursues a complaint of victimisation. The respondent says the claimant hasn't identified a protected act. The detriment on which the claimant relies is a failure to pay wages. In response to the respondent's position the claimant has pointed out that in the claim form she set out that the detriment was as a result of the claimant complaining to the respondent about the lack of training, The claimant asserts that this was also a complaint of discrimination and therefore, a protected act.
34. The Tribunal has taken the claimant's case at its highest. As a result, the victimisation complaint is an arguable complaint which has more than little reasonable prospects of success. The respondent's application for strike out and/or deposit order of this complaint is unsuccessful and is dismissed.

(c)Breach of contract complaint

35. The breach of contract complaint has no reasonable prospect of success. The claimant complains that the respondent failed to pay wages, because the wages were not paid into a particular bank account. However, it is clear the respondent was only obliged to pay the wages into a bank account. The respondent was able to point to evidence that wages were paid into an active bank account attributed to the claimant.
36. The complaint of breach of contract is therefore struck out.

Claimant's conduct

37. The respondent contended that the claimant's conduct was unreasonable and as a result the claim should be struck out. In particular the respondent complained about the claimant's failure to attend hearings and the lengthy correspondence produced by the claimant.
38. Unreasonable conduct is deliberate and persistent disregard of what is required by the procedural steps that could make a fair trial impossible. To strike out the claim must be a proportionate response to that conduct. Even if the claimant has acted unreasonably, a strike out of the claim cannot be used as a punishment. The appropriate remedy in such cases could be a costs order if a fair trial is still possible.
39. In the case of **Smith -v- Tesco Stores Ltd (2023) EAT 11** the Employment Appeal Tribunal deemed a strike out was suitable when the claimant had refused to cooperate with the Tribunal's process following the case management of the claim. This is similar to the claimant's conduct in this case, but the Tribunal has yet to be afforded the opportunity to case manage this matter.

40. The claimant's conduct must be seen in the context of responding to a strike out and/or deposit order application. There is no criticism of the respondent, it is entitled to make that application. However, this matter has been listed for a preliminary hearing to determine that application before the issues have been discussed at a case management preliminary hearing. The case management preliminary hearing is particularly important when one of the parties is a litigant in person.
41. The lengthy responses produced by the claimant are also a product of the lack of case management by the Tribunal. It is important to list this matter for a case management preliminary hearing to assist the parties in the future conduct of this matter.
42. The claimant has been unreasonable in her conduct by not attending either preliminary hearing, but a fair trial is still possible. Once the matter is listed for a case management preliminary hearing and the Tribunal is able to discuss the claim with both parties, the Tribunal is confident that the matter can proceed to a fair hearing.
43. The matter will be listed for a case management hearing by CVP to discuss the issues further. As a result, the respondent's application to strike out the claim on the basis of the claimant's conduct is unsuccessful and is dismissed.

Costs application

44. The respondent made an application for costs following the claimant's non-attendance at the preliminary hearing on 22 May 2025.
45. On 21 May 2025 the claimant informed the Tribunal that she would not be in attendance because she had not received any evidence from the respondent in order to respond to the application for strike out/deposit order.
46. On that occasion Employment Judge Buzzard relisted the hearing on the basis that the claimant was given the benefit of the doubt that she had misunderstood what she needed to do to respond to the application.
47. The matter had been listed for a case management preliminary hearing on 8 May 2025 but was superseded by the listing of the preliminary hearing to determine the respondent's application. Had the case management hearing gone ahead, the claimant would have understood what was required of her to respond to the respondent's application and it is likely that the hearing on 22 May 2025 would have gone ahead.
48. However, the claimant's non-attendance at the preliminary hearing meant that the Tribunal lost the opportunity to discuss the matter with the parties. The matter had to be relisted for a second preliminary hearing.
49. The Tribunal has determined that the claimant acted unreasonably in not attending the preliminary hearing on 22 May 2025.
50. The Tribunal has considered whether to exercise the discretion to make a costs order in accordance with rule 74.

51. The extent of the claimant's income is unclear from the information provided by the claimant. The outgoings detailed in the bank account statement suggest that the claimant is in receipt of income in addition to universal credit.
52. Any costs order should be compensatory and not punitive. Any costs claimed should be those reasonably and necessarily incurred by the receiving party as a result of the conduct.
53. The preparation time for the hearing itself is not recoverable. The hearing went ahead today and that cost would have always been incurred by the respondent. The Tribunal has also determined that the costs incurred in reporting the outcome of the first preliminary hearing to the respondent would have been incurred in event and are not recoverable.
54. The costs reasonably and necessarily incurred by the respondent as a result of the claimant's conduct is the preparation time for the costs order and the refresher fee for Counsel attending a second preliminary hearing. These costs are recoverable.
55. The respondent incurred costs of £307.50 plus VAT as a result of the instructed solicitor's preparation time. The Tribunal is unaware of the refresher fee charged by Counsel for attending a second preliminary hearing. However, the Tribunal has determined that a proportionate and reasonable amount is £1,000 plus VAT.
56. The Tribunal has considered the claimant's ability to pay this amount. The Tribunal believes the claimant is in receipt of income in addition to universal credit and has the ability to pay.
57. The Tribunal therefore exercises its discretion and makes a costs award of £1569 payable by the claimant to the respondent.

Approved by:

Employment Judge Ainscough

2 January 2026

JUDGMENT AND REASONS SENT TO THE PARTIES ON

5 February 2026

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