



EMPLOYMENT TRIBUNALS

Claimant: Peter Ntui

Respondent: Lidl Great Britain Limited

Heard at: London South
Employment Tribunal

On: 9 February 2026

Before: Employment Judge Burge

REPRESENTATION:

Claimant: In person

Respondent: Ms B Clayton, Counsel

JUDGMENT

It is the Judgment of the Tribunal that:

1. The claim is struck out under Employment Tribunal Rule 38(1)(c) because the Claimant has failed to comply with Tribunal Orders and under s.38(1)(d) because it has not been actively pursued.

REASONS

JUDGMENT having been delivered orally to the parties on 9 February 2026 and written reasons having been requested by the Claimant at the hearing in accordance with Rule 60(4) of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided:

1. The claim was issued on 13 May 2024 (following ACAS Early Conciliation of 22 April with a certificate being issued on 24 April 2024). The Claimant said he had been employed as Deputy Store Manager in Lidl from 1 December 2003 and that his employment had ended on 25 January 2024. The claim form was

completed by Manyi Ebot-Ntui of Divinefield Solicitors. In these proceedings the Claimant signed off his emails with the email signature Divinefield Solicitors. He confirmed to me today that his wife is Manyi Ebot-Ntui of Divinefield Solicitors, he works for Divinefield Solicitors and has a Masters in Law.

2. In its Response the Respondent said that the Claimant was absent from work from the 13 April 2021 until the termination his employment on the 25 January 2024, as a consequence of hip, knee and back pain and that he was dismissed due to absence caused by his ill health.
3. The 4 day final hearing was listed on 14 August 2024 to take place from tomorrow on 10 – 13 February 2026.
4. Case management preliminary hearings took place on 17 June 2025 and 17 December 2025 before Employment Judge S Evans and Employment Judge L Cowen. The Claimant was actively pursuing his claim after the first preliminary hearing. He had provided his Schedule of loss and disability information to the Respondent. At the preliminary hearing with Employment Judge L Cowen on 17 December 2025, the parties indicated they would like to keep the final hearing date even though there was a lot to do. A public preliminary hearing was listed for 9 February 2026 to determine the Respondent's application for strike out/deposit and any other preliminary issues. Employment Judge L Cowen made further Orders including disclosure and that by 26 January 2026 exchange of witness statements should take place. The parties were warned:

“(1) Under rule 6, if this Order is not complied with, the Tribunal may take such action as it considers just which may include (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 38, if a fair hearing is no longer possible; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rules 72-82.

(2) You may apply under rule 30 for this Order to be varied, suspended or set aside.”

5. The List of Issues included:
 - a. Time limits
 - b. Protected disclosure detriment
 - c. Direct race discrimination
 - d. Direct Sex discrimination
 - e. Direct Age discrimination
 - f. Disability discrimination (direct, discrimination arising and a failure to make reasonable adjustments)
 - g. Victimisation
 - h. Unfair dismissal (ordinary and automatic)
 - i. Notice pay
 - j. Holiday pay
6. The parties sent each other lists of documents on 31 December 2025. However, with the Claimant's list he said that it was only a “cross-section” and he would

“hopefully have it finalised by the weekend”, but he did not write to the Respondent again until 30 January 2026.

7. The Claimant was to provide some names and dates where details were missing in the List of Issues. He was supposed to do so by 5 January 2026 but did not do so until Friday evening on 6 February 2026.
8. The Respondent was to respond to the Claimant's list of issues by 12 January 2026 as well as to provide the draft bundle index. On 14 January 2026 the Respondent wrote to the Claimant attaching a draft hearing bundle supplemental documents and chased up the Claimant's documents.
9. On 16 January 2026 the Respondent submitted its Amended Response.
10. On the 16 January 2026, the Respondent filed and served applications in advance of the Preliminary Hearing. They applied for strike out/deposit order for:
 - “(i) all claims in respect of any act or omission which took place before 23rd January 2024.
 - (ii) the Claimant's claim for detriment I automatic unfair dismissal contrary to s.48 or S.103A Employment Right Act 1996.
 - (iii) the claim for sex discrimination.
 - (iv) all allegations of victimisation where the detriment took place before the alleged protected act.
 - (v) the claim for notice/wrongful dismissal.”
11. On 20 January 2026 the Respondent chased the Claimant's documents and provided an updated hearing bundle.
12. On 26 January 2026, the Respondent wrote again to the Claimant, concerned that they had not received any correspondence from him since the 31 December 2025, informing him that they had not received his complete List of Documents, revised draft List of Issues, documents they requested, or any reply to the application dated 16 January 2026 or any comments or proposed amendments to the Hearing Bundle Indexes/Hearing Bundles sent.
13. On 29 January 2026, the Respondent wrote to the Tribunal making an additional application that the Claimant's claim be struck out because of his failure to actively pursue his claim / comply with the CMOs.
14. On 30 January 2026, the Claimant sent his response to the application for strike out/deposit Order sent to him on 16 January 2026. The Claimant made no reference to any request for documents being outstanding.
15. On 30 January 2026, the Respondent asked the Claimant to confirm by return when they would receive his List of Documents, requested documents, and List of Issues. They requested confirmation as to whether he was ready to exchange witness statements.
16. On 2 February 2026 the Respondent provided a draft cast list and chronology to the Claimant.

17. On 2 February 2026, the Claimant wrote to the Respondent proposing a joint application for the final hearing to be postponed. The Claimant also stated, "I am still waiting for the specific document I requested". The Respondent had not received any specific request and so asked the Claimant for it which he did not respond to. The Respondent asked again for his List of Documents, the revised List of Issues, and documents requested, and sent a further link to the Index/Hearing Bundle. They also sent the Claimant a hard copy of the Index/Hearing Bundle.
18. On 4 February 2026 Regional Judge Khalil wrote to the parties that in addition to the Respondent's application dated 16 January 2026, the public Preliminary Hearing on 9 February 2026 would determine the Respondent's additional application for the claims to be struck out as they are not being actively pursued and/or for breach of Case Management Orders such that a fair trial is not possible in the window when the trial has been listed.
19. Witness statements were exchanged on Friday 6 February 2026 at about 16.30. The Claimant's witness statement contained the legal headings of claims, as mirrored from the list of issues and scant other detail. At 19.58 the Claimant provided an Amended List of Issues which included the detail missing from the List of Issues.
20. On Sunday 8 February 2026 at 23.26 the Claimant responded to the strike out application.
21. Both the Claimant and Ms Clayton on behalf of the Respondent gave oral submissions.

Relevant law

Strike out

22. Rule 38 of the Employment Tribunals Rule of Procedure 2024 provides:

38. Striking out

- (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...*
23. When considering the proportionality test under any ground, it is important to have in mind the overriding objective (Rule 3) and consider whether any steps short of striking out the claim or response could remedy the defect and make a

fair trial possible (*Laing O'Rourke Group Services Ltd and ors v Woolf and anr* EAT/0038/05).

24. Striking out the claim or response is the most draconian of sanctions and the authorities rightly caution against taking that step unless it is truly necessary in the circumstances.

Breach of Tribunal Orders

25. The leading case, in the context of breach of tribunal orders, remains *Blockbuster Entertainment Ltd v James* [2006] EWCA Civ 684, [2006] IRLR 630. When considering whether to strike out under rule 38(1)(c) i.e. for non-compliance with rules, the Court of Appeal stated that it would take '*something very unusual indeed to justify the striking out, on procedural grounds, of a claim which had arrived at the point of trial*'. When considering proportionality of the response, the Tribunal has to look at whether there is '*a less drastic means to the end for which the strike-out power exists*'.
26. Per rule 6(2) alternatives include (a) waiving or varying the requirement; (c) barring or restricting a party's participation in the proceedings and (d) awarding costs. A further alternative would be an unless order. Strike out for non-compliance is very much the last resort (*Forrest v Amazon Web Services EMEA SARL UK Branch* [2025] EAT 81).
27. In *Harris v Academies Enterprise Trust* [2015] UKEAT/0097/14/KN and UKEAT/0102/14/KN, the EAT referred to the fact that a failure to comply with orders of a Tribunal over some period of time, repeatedly, may give rise to a view that if further indulgence is granted, the same will simply happen again and that Tribunals must be cautious to avoid that. However, the EAT noted that if the failure was 'an aberration' which was unlikely to recur then that would weigh against strike out. The EAT went on to say that:

"each case should be dealt with in a way that ensures that other cases are not deprived of their own fair share of the resources of the court. If a case drags on for weeks, the consequence is that other cases, which also deserve to be heard quickly and without due cost, are adjourned or simply not allotted a date for hearing."

Failure to actively pursue

28. In the context of a failure to actively pursue the litigation. In *Evans and anor v Commissioner of Police of the Metropolis* 1993 ICR 151, CA, the court held that the tribunal must apply the same principles when exercising the power to strike-out, as apply in the civil courts. These principles require that, if the default is not intentional and contumelious, it is necessary to show, quoting from *Birkett v. James* [1978] A.C. 297, 318:

"(a) that there has been inordinate and inexcusable delay on the part of the plaintiff or his lawyers, and (b) that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or to have caused serious prejudice

to the defendants either as between themselves and the plaintiffs or between each other or between them and a third party.”

29. In *Rolls Royce plc v Riddle* [2008] IRLR 873, EAT, Lady Smith pointed out that it is “quite wrong” for a claimant “to fail to take reasonable steps to progress his claim in a manner that shows he has disrespect or contempt for the tribunal and/or its procedures” (at [20]) and that

“35. Strike out is the most serious of outcomes for a Claimant. It is though, one that can competently be ordered by the Tribunal and it is important to avoid reading the warnings in the authorities regarding its severity as indicative of it never being appropriate to use it.”

30. In *Khan v London Borough of Brent* UKEAT/0002/18 HHJ Tucker noted, “[b]eing a litigant in person does not mean that a litigant is exempt from compliance with procedures or from engaging in the litigation process to pursue a claim” (at [31]).

Does a fair trial remain possible?

31. When assessing whether a fair trial can take place, the ability to have a fair trial within the trial window is a key consideration because if there is no further hearing listed and it is not proportionate to list one, a fair trial is not possible (*Emuemukoro v Croma Vigilant (Scotland) Ltd v Anr* EA-2020-000006-JOJ).

Two stage process

32. The striking out process involves a two-stage test: first the grounds for striking out must be established; second, the tribunal should decide, as a matter of discretion, whether to strike the claim out or order that a deposit must be paid: *HM Prison Service v Dolby* [2003] IRLR 694 EAT.

Conclusions

33. I am mindful that the Claimant is bringing extensive claims including discrimination and it is important that discrimination claims are properly heard. Further the Claimant is a litigant in person, although he does have a Masters in law and does work for a firm of solicitors. However, the Claimant’s submissions to the Tribunal were inconsistent. He started by saying that he had more disclosure to make. When I asked why, given he had brought his claim two years ago, had still not provided full disclosure, the Claimant changed his mind and said that he had disclosed everything he had. He also said that the Respondent’s solicitors had three solicitors writing to him and it was “too much”. Yet he then said that he had not received their emails.
34. The Claimant had written in response to the Respondent’s application that he had requested a further document, he also gave submissions that this was why he had not complied with Tribunal Orders – because he was waiting for that document. He appeared to have a letter from a file in front of him that he said he had attached to an email but he had not provided this to the Respondent when they said that they had not received any request from him. He had also not provided this to the Tribunal. This explanation is rejected, it is implausible that if

he had sent the request for documents that he did not then resend it once he received the Respondent's solicitors' correspondence saying they had not received the request. He is a litigant in person but he also has a Masters in Law and works in a solicitors firm.

35. In deciding whether to order strike-out, tribunals should have regard to the overriding objective of dealing with cases "fairly and justly", set out in Rule 3 of the Tribunal Rules 2024. This includes, among other things, ensuring so far as practicable that the parties are on an equal footing, dealing with cases in ways that are proportionate to their complexity and importance, and avoiding delay. The overriding objective requires that the proportionality of the sanction must be at the forefront of the Judge's mind, having regard to the relevant default, its effect on the other side, and whether a lesser sanction is available and appropriate.
36. The Claimant was dismissed on 25 January 2024, just over 2 years ago. London South Employment Tribunal is now listing in July 2028 for 4 or 5 day hearings. To delay matters for over two years would not be in accordance with the overriding objective, would not be in the interests of justice and would create delay and unreliable recollection which would seriously prejudice the fair hearing of this matter. The question is then whether a fair trial can take place within the trial window starting tomorrow.
37. There is an obvious prejudice to the Claimant in having his claim struck out – it deprives him of the opportunity to have his case determined. What are the other less drastic steps to cure the default and let the parties have a fair hearing? Rule 6(2) suggests (a) waiving or varying the requirement; (c) barring or restricting a party's participation in the proceedings and (d) awarding costs. A further alternative would be an unless order. All of these options would create significant prejudice to the Respondent given the final hearing starts tomorrow.
38. As set out extensively in the authorities, strike out for non-compliance is very much the last resort. The provision of further information was provided in the evening on Friday, after witness statements were exchanged. This created prejudice for the Respondent. I could vary the requirement and allow the Respondent to amend its witness statements at this late stage, the day before the final hearing. However this does not overcome the prejudice of not having time to make enquiries based on the extremely late provision of the further information. If I struck out the parts of the claim that the Claimant had only just provided the name/details of then that would be less draconian than striking out the whole claim. However, if the hearing were to take place tomorrow, given the scant factual detail in the Claimant's witness statement, he would have to be allowed to give extensive further evidence in chief in order to explain what he says happened on what dates. That would effectively be an ambush and would not be fair to the Respondent.
39. The Claimant did comply with earlier orders and was actively pursuing his case prior to 31 December 2025. Indeed, the parties were keen for the hearing to take place in February at the last case management preliminary hearing before employment Judge Cowen. However, from 31 December 2025 until he wrote on 30 January 2026 he did not comply with Tribunal Orders and was not actively pursuing his claim. He provided a "cross section" of his List of Documents on 31

December 2025 saying he was “unfortunately.. still working on” his. He then did provide additional disclosure on 6 February 2026, although given his contradictory submissions to me, it is unclear if there are further documents he should have disclosed. The Claimant did not comply with the Order that by no later than 5 January 2026 he must have sent to the respondent a revised Draft List of Issues, which amends the draft List of Issues. This was not provided until Friday evening, 6 February 2026.

40. Although the Claimant's inaction only spanned the period of a month, it was a very important period for this claim to be properly prepared so that it could be fairly heard. The Claimant gave no reason (other than he was waiting for a document from the Respondent) why he only partially complied with the requirement to provide a disclosure list on 31 December 2025 and then did nothing in relation to the Case Management Orders until the Friday before the final hearing, and why he did not respond to the Respondent's emails. I therefore conclude that the grounds for strikeout have been established due to the Claimant's non-compliance with Tribunal Orders (disclosure list and provision of dates/details in the List of Issues) and due to him not actively pursuing his claim. The prejudice to the Respondent is too great to continue. A fair hearing is no longer possible in the trial window.
41. Having concluded that grounds for strike out have been established, I also exercise my discretion to strike out the claims. This is one of those rare cases where strike out is appropriate, for all the reasons set out above.
42. The Claimant's claims are therefore struck out in their entirety and the hearing listed for 10 – 13 February 2026 is vacated.

Approved by:

Employment Judge Burge

9 February 2026

Notes

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

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