EMPLOYMENT TRIBUNALS

Claimants: Mr Syed Gillani (and others)

Respondents: Veezu Limited (and others)

Heard at: Cardiff, by video **On:** 15 December 2025

Before: Employment Judge S Jenkins

Representation
Claimants: Ms S Jolly KC
Respondent: Mr R Leiper KC

JUDGMENT

The Respondents' application, to strike out the claims of specific Claimants on the basis that there has been non-compliance with orders and/or failures to actively pursue the claims, is refused.

REASONS

Background

1. This is the second decision arising from a preliminary hearing held on 15 December 2025. On 2 January 2026, I completed my decision in relation to the identification of Lead Claimants, having prioritised that issue over the other matter dealt with at the hearing, the Respondents' strike out application, due to that issue having a more urgent bearing on the public preliminary hearing due to take place in June and July 2026. Sections of the decision produced on 2 January 2026, particularly those relating to the conversion of the hearing to a public preliminary hearing to consider the strike out application, also apply to this judgment.

The strike out application

2. The Respondents made an application to strike out the claims of various Claimants in a letter from their representative, Lewis Silkin, dated 24 October 2025. At that time, the application related to some forty Claimants, but that has subsequently been reduced to some thirty Claimants.

3. One of those was Mr Amjid Dad, who was initially put forward as a potential Lead Claimant but who subsequently withdrew for personal reasons. The others were all Claimants who had been randomly selected to complete a questionnaire relating to their driving activities, and who had not completed the questionnaire.

4. The application was made, pursuant to Rule 38 of the Employment Tribunal Procedure Rules 2024 ("Rules"), on the basis of failure to comply with Tribunal orders and failing to actively pursue claims.

The Orders made

5. As noted in my decision produced on 2 January 2026, the Employment Appeal Tribunal ("EAT") issued case management Orders and Directions on 16 July 2025. In relation to the provision of questionnaires, paragraph 1 of the EAT Orders noted as follows:

   "*By 28 July 2025, Leigh Day to send to 113 randomly selected Claimants:*

   a questionnaire, to be verified by a statement of truth (in the format set out in the CPR PD 22 and signed by the individual). In the questionnaire, the relevant Claimants must be asked to give their best estimate, in respect of the period starting from two years before the date of their claim and ending on the date the questionnaire is submitted, having made reasonable enquiries and considered any physical or electronic records in their possession, of the dates and times that they were logged onto any other apps for the purposes of driving, delivery, or related private hire or courier services; and of the dates on which they made themselves available to other businesses and/or clients for the purposes of driving, delivery, or related private hire, chauffeur or courier services."

6. Paragraph 2 of the Orders required Leigh Day, also by 28 July 2025, to provide Lewis Silkin with the names and case numbers of the 113 randomly-selected Claimants.

7. Paragraph 4 noted that, "*In the event that, by 19 September 2025, Leigh Day has not received 50% or more completed responses, Leigh Day can automatically re-generate new randomised Claimants and send out the same questionnaires to further Claimants and inform Lewis Silkin that it has done this and the names and case numbers of the new randomly selected Claimants.*"

8. Paragraph 6 then provided that, by 3 October 2025, completed questionnaires were to be shared with Lewis Silkin.

9. Finally, paragraph 8, provided that, by 24 October 2025, the Respondents were to make any applications they wished to pursue in respect of the information provided.

The steps taken in relation to the Orders

10. On 28 July 2025, Leigh Day provided the names and case numbers of the

113 randomly-selected Claimants to Lewis Silkin. The, on 3 October 2025, Leigh Day shared completed questionnaires with Lewis Silkin. Only 68 completed questionnaires were provided, but further completed questionnaires were subsequently produced, such that, by 10 December 2025, 84 of the originally intended 113 had been provided.

11. Leigh Day did not, as anticipated by paragraph 4 of the EAT Orders, re-generate new randomised Claimants and send out the same questionnaire to such Claimants. Instead, and it is not clear when this took place, they contacted every Claimant and, it is presumed, sent them the questionnaire for completion. They then shared questionnaires completed by 29 volunteers by way of a link embedded within their email to Lewis Silkin of 10 December 2025.

12. Also embedded within that email was a link to the final ten additional questionnaires from Claimants who had originally been randomly selected to complete them, which Leigh Day indicated brought the total number of questionnaires from that initial pool of Claimants to 84.

13. Leigh Day went on to comment in the email that the Respondents had very large amounts of information about the Claimants' availability for other apps, businesses or clients, and contended that further orders to require any additional Claimants to provide the same information were entirely unnecessary. They observed that they felt that the Respondents were already in receipt of a statistically significant sample of questionnaires, and they did not accept that there was any particular importance to the number being 113.

14. They went on to say however, that, notwithstanding that position, they had sought instructions from clients about providing voluntary information about their availability for other apps, businesses or clients. They confirmed that they had contacted every claimant and were then sharing 29 questionnaires from willing volunteers. They further commented that, by way of reassurance, the volunteer Claimants had not been specifically sought out or "cherry picked" by them, they had simply contacted every Claimant seeking volunteers, and had provided questionnaire responses from the first 29 volunteering Claimants.

15. Leigh Day noted that, in light of the additional information provided, the Respondents were now in receipt of information from 113 Claimants. They concluded by inviting the Respondents to withdraw their strike out application.

16. Lewis Silkin replied, on 11 December 2025, noting that they agreed to withdraw the application in relation to the individuals in the originally randomly-generated list who had now provided a response to the questionnaire, but did not withdraw the strike out application in relation to the remaining Claimants who had still not responded.

17. With regard to Mr Dad, as noted in the document produced on 2 January 2026, Leigh Day were to provide to Lewis Silkin, by 8 August 2025, the names of twelve potential Lead Claimants. They provided those names,

which included Mr Dad. However, on 10 October 2025, Leigh Day indicated, in an email to Lewis Silkin, that Mr Dad was no longer able to act as a Lead Claimant for personal reasons. He was subsequently replaced as a potential Lead Claimant.

The hearing on 15 December 2025

18. As I noted in the document produced on 2 January 2026, the hearing on 15 December 2025 was originally convened as a private hearing to deal with case management issues. However, as I explained in the 2 January 2026 document, the hearing was converted to a public hearing, with appropriate notification on CourtServe, in order to consider the strike out application, which must take place as a public hearing pursuant to Rule 54.

Issue

19. The issue to be considered in that regard, was whether the claims of the identified Claimants should be struck out on the basis; either, that there had been non-compliance with an Order of the Tribunal; or; that the claims had not been actively pursued.

Law

20. Rules 38 provides, relevantly to the Respondents' application under consideration, as follows:

"*38.—(1) The Tribunal may … on the application of a party, strike out all or part of a claim … on any of the following grounds—*

…

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

(d) that it has not been actively pursued;

…"

21. The relevant legal principles governing strike-out applications on that basis were set out in the skeleton argument of Ms Jolly KC, and were accepted by Mr Leiper KC.

22. Particular guidance on the approach a Tribunal should take in relation to strike-out applications was provided by the Court of Appeal in *James –v- Blockbuster Entertainment Ltd [2006] EWCA Civ 684*, and by the Employment Appeal Tribunal in *Bolch v Chipman [2004] IRLR 140*. Both involved applications under what is now Rule 38(1)(b) relating to the unreasonable conduct of the proceedings, but the conduct in the former case related to the failure to comply with Tribunal orders, and the principles apply equally to sub-paragraphs (c) and (d).

23. In the former case it was noted, at paragraph 5, that, "*The two cardinal*

conditions for [the strike-out power's] exercise are either that the unreasonable conduct has taken the form of deliberate and persistent disregard of required procedural steps, or that it has made a fair trial impossible. If these conditions are fulfilled, it becomes necessary to consider whether, even so, striking out is a proportionate response".

24. In the latter case, it was noted, at paragraph 55, that three points are required to be decided by a Tribunal in relation to a strike out application:

"(*1) There must be a conclusion by the Tribunal not simply that a party has behaved unreasonably, but that the proceedings have been conducted by or on his behalf unreasonably.*"

"*(2) Assuming there be a finding that the proceedings have been conducted scandalously, unreasonably or vexatiously, that is not the final question so far as leading onto an order that the Notice of Appearance must be struck out.*

The helpful and influential decision of the Employment Appeal Tribunal, per Lindsay P, in De Keyser Ltd v Wilson [2001] IRLR 324 is directly in point. De Keyser makes it plain that there can be circumstances in which a finding can lead straight to a debarring order. Such an example, and we note paragraph 25 of Lindsay P's judgment, is "wilful, deliberate or contumelious disobedience" of the Order of a court.

But in ordinary circumstances it is plain from Lindsay P's judgment that what is required before there can be a strike out of a Notice of Appearance or indeed an Originating Application is a conclusion as to whether a fair trial is or is not still possible."

"(3) Once there has been a conclusion, if there has been, that the proceedings have been conducted in breach…, and that a fair trial is not possible, there still remains the question as to what remedy the tribunal considers appropriate, which is proportionate to its conclusion. It is also possible, of course, that there can be a remedy, even in the absence of a conclusion that a fair trial is no longer possible, which amounts to some kind of punishment, but which, if it does not drive the defendant from the judgement seat… may still be an appropriate penalty to impose, provided that it does not lead to a debarring from the case in its entirety, but some lesser penalty."

25. The EAT also provided guidance on the approach to be taken in relation to strike out applications in *Weir Valves & Controls (UK) Limited v Armitage [2004] ICR 371*. That case also addressed an application to strike out on the basis of unreasonable conduct, but the conduct concerned was the failure to comply with the Tribunal's order regarding the exchange of witness statements, so the principles apply equally to applications arising from non-compliance with Tribunal Orders generally. At paragraphs 13 to 17, the Appeal Tribunal noted as follows:

"*13. What are the principles on which the Employment Tribunal should act*

in deciding whether to strike out in a case such as this, where there has been a breach of a direction?

14. Where the unreasonable conduct which the Employment Tribunal is considering involves no breach of a court order, the crucial and decisive question will generally be whether a fair trial of the issues is still possible: De Keyser Ltd v Wilson [2001] IRLR 324 , at paragraphs 24 to 25 applying Logicrose Ltd v Southend United Football Club Ltd (Times, 5 March 1998) and Arrow Nominees Inc v Blackledge [2000] 2 Butterworths Company Law Cases, 167 . De Keyser Ltd v Wilson was recently followed and applied in Bolch v Chipman [2003] EAT 19 May, a decision which has been starred and is likely to be reported: see pages 21–22.

15. Even if a fair trial as a whole is not possible, the question of remedy must still be considered so as to ensure that the effect of a debarral order does not exceed what is proportionate: see Bolch v Chipman at pages 23–25. For example, it may still be entirely just to allow a defaulting party to take some part in a question of compensation which he is liable to pay: see page 25.

16. Those principles apply where there is no disobedience to an order. What if there is a court order and there has been disobedience to it? This is an additional consideration. The principles which we have set out above do not apply in the same way. The Tribunal must be able to impose a sanction where there has been wilful disobedience to an order: see De Keyser v Wilson at paragraph 25, Bolch v Chipman at page 22.

17. But it does not follow that a striking out order or other sanction should always be the result of disobedience to an order. The guiding consideration is the overriding objective. This requires justice to be done between the parties. The court should consider all the circumstances. It should consider the magnitude of the default, whether the default is the responsibility of the solicitor or the party, what disruption, unfairness or prejudice has been cause and, still, whether a fair hearing is still possible. It should consider whether striking out or some lesser remedy would be an appropriate response to the disobedience."

26. In *Evans and anor v Commissioner of Police of the Metropolis [1993] ICR 151,* the Court of Appeal held that an Employment Tribunal's power to strike out a claim for want of prosecution, i.e. using the parlance of the current Rules, for failure to actively pursue, must be exercised in accordance with the principles that, prior to the introduction of the Civil Procedure Rules 1998, governed the equivalent power in the High Court, as set out by the House of Lords in *Birkett v James 1978 AC 297, HL*. Accordingly, a tribunal can strike out a claim where:

- there has been delay that is intentional and contumelious (disrespectful or abusive to the court), or
- there has been inordinate and inexcusable delay, which gives rise to a substantial risk that a fair hearing is impossible, or which is likely to

cause serious prejudice to the respondent.

Submissions

The Respondents

27. Mr Leiper, on behalf of the Respondents, noted that the strike out application was limited to those Claimants who had been selected to respond to questionnaires who had done nothing in relation to them. He noted that the Respondents had been expecting explanations from those Claimants in relation to their non-compliance, whereas, in fact, the submissions received in writing from Ms Jolly on behalf of the Claimants on the morning of the hearing dealt with the position as a whole, and did not address the individual circumstances of the particular Claimants. He noted that that, in essence, amounted to the Claimants taking the position that whatever the reason for the lack of compliance, it made no difference to the onward progress of the claims, and therefore did not matter. He contended that that was not the correct approach as the application related to those Claimants who had failed to participate as directed.

28. Mr Leiper noted that it was entirely possible that individual Claimants could have a legitimate explanation for the lack of compliance, but, at the moment, none had been advanced. He further noted that the essence of Ms Jolly's written submissions was that, as the Respondents now had the relevant number of completed questionnaires, matters could now proceed, but that had been done outside the specific Order. He contended that that was a relevant factor, as the material provided was not from an entirely random sample as anticipated by the EAT Order. Some of the originally identified Claimants had failed to comply, and it could be that those individuals had every reason not to comply because they had done so much work for other platforms. Similarly, the additional questionnaires had not been provided from randomly-selected individuals, but from individuals who had put themselves forward and they might be the "best ones" from the Claimants' perspective.

29. Mr Leiper referenced the multifactorial approach directed to be applied in the EAT decision of *Weir Valves*, in which the Appeal Tribunal noted, at paragraph 17, that the Tribunal should consider all the circumstances, which would encompass the magnitude of the default, whether the default was the responsibility of the solicitor or the party, what disruption, unfairness or prejudice had been caused, and whether a fair hearing was still possible. He observed that the Claimants' position appeared to be that, as a fair hearing was still possible, the claims should not be struck out, but he emphasised the multifactorial approach that must be undertaken, and that that cannot be undertaken in a vacuum.

30. Mr Leiper further noted, with regard to Rule 38(1)(d) that one basis on which strike out for failure to actively pursue claims could arise was where

the default was intentional and contumelious, commenting that, without any explanation for how the default had arisen, that could not be determined. He submitted that it could not be the case that the Claimants could avoid a finding of intentional default simply by offering no explanation.

31. He further contended that the only proper course would therefore be either to infer that there was no good explanation and that the failure meant that the claims were not being actively pursued, with the failure to tender an explanation being another failure which was intentional and contumelious; or to allow the Claimants an opportunity to explain their default.

32. He further questioned how there could be a fair hearing of individual cases, if those Claimants were unwilling to participate at this early stage, and contended that there was no basis to reject the Respondents' application where no explanation had been provided. He confirmed that if explanations were provided which were apparently credible then the Respondents would not seek strike out of those individual claims.

The Claimants

33. Ms Jolly on, on behalf of the Claimants, noted that the directions about the provision of completed questionnaires had been agreed between the parties at the time of the EAT hearing in Summer 2025 in the context of two matters; first, the Respondents' position that they needed to have an overall picture of multi-apping; and, secondly, the EAT's judgment that requiring all Claimants to provide such information was too onerous. The aim therefore, had been to identify a tolerable alternative which provided an overall picture but which was not to burdensome on the Claimants.

34. Ms Jolly further noted that the parties were then asked by the EAT to agree directions, and that one of the matters of concern identified had been the possibility that only a small number of questionnaires would be returned. That led to paragraph 4 of the EAT Orders which would involve Leigh Day re-generating further randomised Claimants if the response rate was less than 50%. Ms Jolly noted that that was the mechanism that was agreed, and that no further directions had been made regarding any randomly-selected Claimants who did not respond.

35. Ms Jolly contended that the Orders had had the particular purpose of providing the required data in relation to the twelve potential Lead Claimants, and that an additional number of 113 questionnaires would be sought, taking the total up to 125, approximately 25% of the overall number of Claimants. 68 completed questionnaires had been provided at the stipulated time, with further questionnaires being produced in subsequent weeks such that, by 10 December 2025, 84 of the originally intended 113 had been provided. She indicated that Leigh Day then recognised that Lewis Silkin might raise the point that 113 were needed, and therefore contacted all Claimants so that an additional extra 29 completed questionnaires could be obtained, which is what then happened.

36. With regard to Mr Leiper's contention that Claimants needed to explain their default individually, she noted that the Respondents' original application had

been made on a group basis.

37. She also noted that Mr Leiper had made no reference to the impact of the defaults on the hearing commencing in June 2026, and that that must be because the Respondents accepted that there would be no impact on that hearing.

38. Ms Jolly disagreed with Mr Leiper's contention that, because the Claimants had failed to comply with the Order and to provide an explanation for their default, that was itself evidence of intentional and contumelious default. She observed that it had never been suggested by the Respondents that individual explanations should be provided, and that the hearing had been listed only for a day, and if it had been intended that, as it initially stood, some 40 Claimants would need to give evidence, there would be no prospect of that being completed. She contended that requiring individual Claimants to prepare witness statements for a preliminary hearing would have been distracting and would have impacted on the June hearing, thus not engaging with the overriding objective.

39. She further contended that the purpose behind the EAT Orders had been met, there was no real suggestion of any improper conduct, and the Respondents' application was opportunistic.

40. With regard to Mr Dad, Ms Jolly contended that he had not failed to comply with any Order; there was no order requiring him to be a Lead Claimant and therefore no breach of any Order had occurred.

41. More generally, Ms Jolly contended that there was no question of the Respondents' ability to defend the claims having been prejudiced. It may be that the individual Claimants who have not responded to the questionnaires will never be required to provide the information as all claims have been stayed pending the outcome of the preliminary hearing in relation to the Lead Claimants. She further contended that not providing completed questionnaires in such circumstances was significantly different from such a circumstance arising in relation to an individual claim, and therefore, the Respondents' approach in making the strike out application was disproportionate.

Conclusions

42. My focus, as drawn from the guidance provided by the *James*, *Bolch* and *Weir Valves* cases, was initially on whether the conduct of the particular Claimants subject to the strike out application potentially formed the basis for strike out, i.e. whether there had been non-compliance with orders, or a lack of active pursuit of the claims. I then turned to the question of whether a fair trial was still possible, described by the EAT in *Weir Valves* as generally, "*the crucial and decisive question*". I also needed to consider all the circumstances, including the magnitude of the default, the degree of disruption, unfairness or prejudice caused, and, again, whether a fair hearing was still possible, considering, if appropriate, whether striking out or some lesser remedy would be an appropriate response.

Non-compliance with Orders?

43. First, with regard to the application under Rule 38(1)(c), for non-compliance with the EAT's Orders, I reminded myself of the particular Orders relevant to my decision, which were as follows:

    Paragraph 1: By 28 July 2025, Leigh Day were to send to 113 randomly-selected Claimants a questionnaire, in which those Claimants were to be asked to give their best estimate of their driving work over a specified period.

    Paragraph 2: Also by 28 July 2025, Leigh Day were to provide Lewis Silkin with the names and case numbers of the 113 randomly-selected Claimants.

    Paragraph 6: By 3 October 2025, Leigh Day were to share completed questionnaires with Lewis Silkin.

    Paragraph 4, whilst not directly bearing on the Claimants subject to this application, was also relevant. That stated that, in the event that, by 19 September 2025, Leigh Day had not received 50% or more completed responses, they could automatically re-generate new randomised Claimants, and send out the same questionnaires to further Claimants, informing Lewis Silkin that that had been done, and providing with the names and case numbers of any such new randomly-selected Claimants.

44. In terms of non-compliance, at an initial level, I did not see that paragraph 1 imposed a mandatory obligation on any of the 113 Claimants who had been sent the questionnaire to complete and return it, although the return of completed questionnaires was clearly the intention or spirit behind the paragraph. If the paragraph had been intended to create such an obligation, it would no doubt have said so. Such a mandatory requirement could also then have negated the need for the re-generation process addressed in paragraph 4.

45. I also noted that the re-generation process set out in paragraph 4 arose when completed questionnaires were received from fewer than 50% of the randomly-selected Claimants, i.e. from 57 or fewer of them. In fact, 68 responses were received by the relevant date. I also noted that, even where fewer than 50% responses were received, the paragraph noted that Leigh Day, "*can*" automatically re-generate new randomised Claimants; it did not say that Leigh Day, "*shall*" or "*must*" or "*are to*" re-generate those new Claimants.

46. With regard to Mr Dad, I noted that the Orders required Leigh Day to provide Lewis Silkin with the names of twelve potential Lead Claimants, and then to provide further particulars in relation to them, which I understand happened. The Orders did not impose any specific obligation on Mr Dad, other than the implicit obligation that he was to provide his further particulars to Leigh Day for onward transmission, which he appeared to have complied with. The Orders also made no reference to what might happen if one of the originally intended potential Lead Claimants withdrew from the process.

47. Overall, therefore, it seemed to me that it could be said that this first stage of the assessment had not been satisfied, on the basis that there had not been any non-compliance with the EAT Orders by the specific Claimants. I was conscious however, that that was a point which occurred to me when considering my decision following the preliminary hearing, and that the point was not one which Ms Jolly had particularly advanced on behalf of the Claimants during the hearing. I also considered that, notwithstanding any view on what the particular Claimants were strictly required to do, the spirit of the Orders was certainly that it was expected that the questionnaires sent to the 113 randomly-selected Claimants would be completed and ultimately provided to the Respondents. The same could also potentially be said of Mr Dad, i.e. that the spirit of the Orders was that, once put forward as a potential Lead Claimant, he would continue to act as such unless and until he was ultimately not selected.

48. I considered whether it would be appropriate to seek the views of the Respondents on this point, whether in writing or by reconvening the preliminary hearing, but I considered that it would be appropriate to complete my analysis in relation to the remaining elements before considering that further.

Failure to actively pursue?

49. I then moved to consider the application under rule 38(1)(d), i.e. whether the claims had not been actively pursued. Here my focus was on whether any failure had been intentional and contumelious, or had been inordinate and inexcusable, such as to give rise to a substantial risk that a fair hearing was impossible, or such as to be likely to cause serious prejudice to the Respondents.

50. I was not satisfied that the lack of response from the particular Claimants in relation to the questionnaires amounted to intentional and contumelious default, or should be taken to be evidence of any failure to actively pursue claims.

51. I again noted that the specific individual Claimants were under no direction to complete the questionnaires, which contrasted with the position of the potential Lead Claimants in relation to whom further particulars, again relating to driving activities over a specified period, were to be provided by paragraph 5 of the Orders. There, whilst the obligation was placed on Leigh Day to provide those particulars, that obligation carried with it an obligation on those potential Lead Claimants to provide that information to Leigh Day.

52. I was conscious however, that the concept of active pursuit under sub-paragraph (d) carries with it a potentially broader assessment than applies in relation to sub-paragraph (c), where a specific act or acts of non-compliance would need to be identified.

53. It was clear that the particular Claimants had not done what it was expected they would have done by not completing and returning the questionnaires. Mr Leiper noted that no individual Claimant had put forward any explanation

for their failure to provide the completed questionnaire, and that it could not therefore be determined that any such failure was intentional and contumelious. He commented that one possible course would be to infer that the Claimants had no good reason for their failure, and that the failure then meant that they were not actively pursuing their claims.

54. In the particular circumstances of these Claimants however, I could not agree with that contention. The current stage of this litigation is that a process has been undertaken to identify Lead Claimants, and to provide information in respect of the driving activities of those Lead Claimants which will be assessed at the forthcoming public preliminary hearing. In addition, a process has been undertaken to enable the Respondents to form a broad assessment of the driving activities of a reasonable proportion of the Claimants as a whole, that reasonable proportion being put by the EAT at approximately 25% of the Claimants as a whole.

55. None of the Claimants subject to the strike out application has been put forward as a potential Lead Claimant, and therefore it is anticipated that their claims will be stayed and will ultimately stand behind the claims of the Lead Claimants. As Ms Jolly pointed out in her submissions, it may well be the case that none of the evidence relating to the driving activities of these particular Claimants will ever be considered at a hearing.

56. What was required by the process that has been underway was for the Respondents to be in a position to have a broad understanding of the driving activities of approximately 25% of the total number of Claimants. I noted that the provision of questionnaires by the originally-selected Claimants was close to 20% of the total number of Claimants, i.e. with 96 (the 12 potential Lead Claimants together with the 84 completed questionnaires) having been provided, and that the subsequently produced 29 questionnaires take the total up to 25%.

57. Even if therefore, as Mr Leiper contended, it could perhaps be said that failure to provide completed questionnaires amounted to intentional default, it did not, in my view, amount to a contumelious failure. Nor, in my view, could it be said that any failure was inordinate and inexcusable giving rise to a substantial risk of a fair trial being impossible or of causing serious prejudice to the Respondents, as I note in more detail below.

58. With regard to Mr Dad, whilst his reasons for not continuing as a potential Lead Claimant had not been produced, Leigh Day had confirmed that they were available if required. However, regardless of that, I did not consider that any inability, or even unwillingness, on his part to act as a Lead Claimant should be taken to indicate a lack of active pursuit of his claim generally. He has, I have presumed, provided further particulars of his driving activities, and, as he is no longer to play any role as a Lead Claimant, his claim will now sit behind the claims of the identified Claimants. There is nothing that he will now be expected to do until the cases of those Lead Claimants have concluded.

Fair hearing?

59. That brought me to the assessment of whether a fair trial would still be possible. In that regard, as I have already noted, the hearing commencing in June 2026 is to assess the worker status of identified Lead Claimants. As I initially concluded in October 2024, and as the EAT confirmed in June 2025 (albeit not to the same extent I considered), it is appropriate for the Respondents to have information about the driving activities of the Claimant body as a whole, i.e., over and above the Lead Claimants (the EAT modified that to information about a reasonable proportion, some 25%, of the Claimant body as a whole), both in order to assess the representativeness of Lead Claimants, and also for submissions to be made, if appropriate, on the circumstances of the Claimant body generally.

60. I initially directed that that required the provision of information by all Claimants, which the EAT overturned, considering that the provision of information relating to approximately 25% of the Claimants as a whole should be provided. That has now been provided, with over 75% of the originally identified Claimants having provided their completed questionnaires. Information has then been provided from a further number of Claimants, taking the total proportion of questionnaires provided by all Claimants up to 25%. Whilst, as I have noted, those further questionnaires were not obtained by way of the process envisaged by the EAT Orders at paragraph 4, the process undertaken to obtain those additional questionnaires appeared to be non-specifically generated, such that the questionnaires now received by the Respondents should enable them to undertake their broad assessment.

61. In the circumstances, there is, in my view, nothing to suggest, whether by reference to rule 38(1)(c) or (d), that a fair trial in June and July of this year will not be possible. In my view therefore, notwithstanding any possible elements of default by the particular Claimants, whether by reference to sub-paragraph (b) or ((c)), little, if indeed any, disruption, unfairness or prejudice has been caused to the Respondents, and a fair hearing is still possible.

62. Therefore, regardless of the potential conclusion I identified above regarding whether there had, in fact, been non-compliance or failures to actively pursue, even if it was clear that there had been, strike out would not be appropriate. There was therefore nothing to be gained by seeking further representations, and the Respondents' application was therefore dismissed.

Authorised for issue by
Employment Judge S Jenkins
12 January 2026

Sent to the parties on:
22 January 2026
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For the Tribunal Office:
C Evans
…..……..

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