



EMPLOYMENT TRIBUNALS

Claimant:

Mr A Macleod

Respondent:

Royal Berkshire NHS Foundation Trust

v

JUDGMENT

1. An effect of the order dated 10 May 2024 is that the following claims have been dismissed:

3303216/2021
3304381/2022
3315470/2022
3312616/2023
3312618/2023
3312620/2023
3312687/2023
3312688/2023 and
3312689/2023

2. The claimant's other claims are struck out.

REASONS

INTRODUCTION

1. On 6 November 2025 I made an order including the following:

"The claimant may, on or before 16 January 2026, provide written submissions in response to applications made by the respondent described at para 5(a)-(c) of the reasons below and subject to the conditions described in the reasons."

2. Para 5(a)-(c) was:

"a. That claims 6, 9, 13 and 15 – 20 (using reference numbers established by the respondent in their letter of 3 May 2024) had not been mentioned in the claimant's table of allegations and therefore had been dismissed by virtue of the unless order. Her point, which I found on the face of it to be highly persuasive, was that para 7 of the order of 6 November 2023 (subsequently

Case Numbers: 3303216/2021 and others (see schedule)

incorporated into the unless order) required that in setting out an allegation the claimant must state the case number (later varied to also include the submission number) containing that allegation. Therefore by definition if that case number did not appear against an allegation in the table of allegations there was no compliance with para 7 and the claim must have been struck out by virtue of the unless order. One of the difficulties with the claimant's lengthy table of allegations is it is very difficult to check, but it is amendable to being searched electronically so a search for the case number ought to show where (if at all) that case number is mentioned in the document.

- b. That the other claims must also be taken to have been struck out by virtue of the unless order. This was because the requirement was for a table of allegations complying with para 7. The respondent gave examples in its letter of 3 May 2024 of instances where it was said that the requirements of para 7 were not met. Ms Misra argued that even if there were some obligations in respect of which para 7 was met, they had been struck out because, overall, the table did not meet the requirements of para 7. She went so far as to say (by reference to Minnoch v Interserve FM Ltd [2023] EAT 35) that if, for instance, one out of ten allegations did not meet the requirements of para 7, subject perhaps only to consideration of materiality, the whole table of allegations was non-compliant and all claims or allegations had been dismissed under the unless order.*

For both of those points it seems to me that the respondent's submissions need to be read together with the letter of 3 May 2024

- c. At paras 36-42 of her submissions Ms Misra sets out reasons why the respondent says that, if not dismissed by the unless order, a fair trial of the claims is not possible, or, to use the terminology in Leeks v UCLH NHS Foundation Trust [2024] EAT 134, there is a "significant risk that a fair trial could not take place". Although not by any means the only point in relation to this, it appears to me that the "further observations" made by me at para 23-28 of the order of 10 May 2024 remain unaddressed by the claimant. Indeed, we are at this point stuck at the question of whether even fair case management can take place, let alone a fair trial."*

3. Para 9(b) of the reasons said:

"The submissions should address the respondent's position that his claims have already been dismissed by virtue of the unless order and that (if not) they should be struck out because a fair trial is not possible. On point (a), if it is the claimant's case that the claims the respondent has identified are in fact identified by case or submission number against

particular allegations he should point to where in his table of allegations this is done. If he wishes to, this could be done in an appendix that will not count towards the word limit on his submissions. On the question of whether a fair trial is possible, I still await proposals from the claimant as to how a fair trial of his claims could be possible. I do not rule out references to the claimant's personal situation or disabilities, but engagement with the substance of the respondent's application is likely to be more helpful than general references to the difficulties the claimant is facing."

4. The matters at paras 5(a) and (b) relate to the effect of an earlier unless order. Para 5(c) raises broader questions in relation to the claims. Amongst other things, this means that paras 5(a) and (b) are to be considered at the time of and in relation to the claimant's purported compliance with the unless order, whereas para 5(c) is to be considered by reference to the current circumstances.
5. The claimant provided his response on 16 January 2026. I note that it seems to have considerably exceeded the 5,000 word limit I provided for. I have, on this occasion, considered the whole of the submission even though it exceeded the limit. The claimant should not expect this to happen again (if the point arises).
6. The unless order was made on 20 March 2024, in the following terms:

"Any allegation not contained in a table of allegations (i) prepared by the claimant in accordance with paras 6 and 7 (as varied) of the order of 6 November 2023 and (ii) submitted to the tribunal and the respondent on or before 5 April 2024, will stand dismissed without further order ..."
7. The relevant paragraphs were:
 6. *... the claimant must prepare and provide to the respondent and the tribunal a "table of allegations" setting out all the complaints he considers are contained within his Claims and that he wishes the tribunal to address.*
 7. *The precise format of the "table of allegations" will be a matter for the claimant, but he must give each allegation an individual number, and in setting out the allegation must state:*
 - (i) *the case number of the case that contains the allegation,*
 - (ii) *the date the action that gives rise to the allegation occurred,*
 - (iii) *which of the respondent's employees or officers carried out the action,*

- (iv) *what legal claim the allegation gives rise to, including, in the case of any allegation of disability discrimination, whether it is direct disability discrimination, indirect disability discrimination, discrimination arising from a disability, a failure to make reasonable adjustments, victimisation or harassment, and in each case, what the discrimination is. In the case of a claim of direct disability discrimination this includes giving the name of the disability that the claimant was subject to direct disability for. In the case of indirect disability discrimination it includes identifying the “provision, criterion or practice” adopted by the respondent, how it put the claimant at a substantial disadvantage and what disability that disadvantage relates to. In the case of discrimination arising from a disability the claimant must say what the matter “arising from a disability” was and what disability it arose from. In the case of a failure to make reasonable adjustments the claimant must identify what “provision, criterion or practice” was adopted by the respondent and how it gave rise to the duty to make reasonable adjustments (including which disability it relates to). In the case of victimisation the claimant must identify the “protected act” which gave rise to the victimisation. In the case of any claim of detriments for making protected disclosures, the claimant must identify the protected disclosure that led to the detriment, and must describe what the detriment was, when it occurred and who was responsible for it.”*
8. The “variation” referred to was a variation in the date of compliance and *“Para 7 of the order of 6 November 2023 is varied so that if the claimant does not know or cannot identify the relevant case number he can instead identify a submission number.”*
9. On 10 May 2024 I issued an order in the following form:
- “Any allegation not contained in a table of allegations (i) prepared by the claimant in accordance with paras 6 and 7 (as varied) of the order of 6 November 2023 and (ii) submitted to the tribunal and the respondent on or before 5 April 2024 has been dismissed.”*
10. That was intended to take effect as a declaration of the effect of the unless order, albeit in an abstract manner. I gave the following reasons for that order:
- “The consequences of the unless order*
29. *One consequence of the claimant’s lengthy table of allegations is that it is impossible to work through every individual allegation to see whether the claimant has or has not complied with the unless order contained in my order of 20 March 2024. It is not possible*

Case Numbers: 3303216/2021 and others (see schedule)

to do what I had intended, which is to cross-refer from the individual claim form to the table of allegations. This may be capable of being done on a general basis, but it cannot be by working through each individual allegation.

30. *Nevertheless, unless orders take effect automatically, and I consider it is appropriate for me to give the notice required under rule 38(1), as set out above.*
 31. *It is not possible to tell at present what that means for the claimant's claims, and what this means in practice may have to be the subject of further argument later.*
 32. *One thing is clear: any legal claims contained in the claimant's claim forms but not included (at all) in the table of allegations have been dismissed. I cannot say if there are any claims of that nature but the claimant's wish to add things to his table of allegations suggests that there may be.*
 33. *The respondent has made some general points about whether there had been material compliance for particular allegations in, for instance, the omission of claim or submission numbers.*
 34. *All I can say for now is that dismissal of any claims under the unless order is not the end of all of the claimant's claims. For many of the allegations I anticipate there will be no dispute that the allegation has been properly included in the table of allegations and continues. Any claim contained in a claim form but not mentioned at all in the table of allegations is dismissed. There may be others for which there remains room for argument, although as I have made clear there seems no reasonable prospect at present of working through those individually.*
 35. *The reason for me making that declaration at this stage is that it triggers the claimant's right under rule 38(2) to apply within 14 days of this declaration being sent to the parties for the unless order to be set aside on the basis that it is in the interest of justice to do so, and I would wish to address any points in relation to this as soon as possible rather than have to address that in several years' time. The claimant should refer to rule 38(2) for the requirements of such an application. If he is to seek legal advice then given the time limits that apply to such an application he should do so as soon as possible in order that he can take advice on any application to set aside the unless order.*
11. I understand the question of whether the claimant made an application under rule 38(2) is presently (or has been) the subject of an appeal by him, but as things stand at present I am proceeding on the basis that no such application

has been made. We are at the point of “*further argument later*” concerning “*what that means for the claimant’s claims*”.

THE LAW ON UNLESS ORDERS

12. The respondent referred to the case of Minnoch, where I find the following helpful review of the law on unless orders from HHJ Tayler (removing references to the creation of the order in the first place and relief from sanctions, which are not matters I am considering in this decision):

“20. *Rule 38 Employment Tribunal Rules 2013 (“ET Rules”) provides:*

“(1) *An order may specify that if it is not complied with by the date specified the claim or response, or part of it, shall be dismissed without further order. If a claim or response, or part of it, is dismissed on this basis the Tribunal shall give written notice to the parties confirming what has occurred.*

(2) *A party whose claim or response has been dismissed, in whole or in part, as a result of such an order may apply to the Tribunal in writing, within 14 days of the date that the notice was sent, to have the order set aside on the basis that it is in the interests of justice to do so. Unless the application includes a request for a hearing, the Tribunal may determine it on the basis of written representations.*
...”

...

22. *In Wentworth-Wood & Others v Maritime Transport Limited UKEAT/0316/15/JOJ HHJ David Richardson considered the potential judicial decisions that may be made in respect of an unless order ...*

23. *HHJ Richardson considered how an unless order should be construed:*

“The starting point, in construing an Unless Order, as any other Order, is the ordinary meaning of the words used. The legal and procedural context will always be relevant: for example, the context may show that the ordinary meaning cannot have been the meaning in the Order. In any event the party who has to comply with an Order must be able to see from its terms what is required to comply with it; an Order cannot be read expansively against the party who has to comply.”

...

25. *In Uwhubetine v NHS Commissioning Board England UKEAT/0264/18/JOJ, HHJ Auerbach stated, of the decision required at stage 2:*
- “44 Where a Tribunal is determining whether there has been compliance with an Unless Order and hence whether to give written notice as to whether the relevant pleading has been dismissed by the Order taking effect, the Tribunal is not concerned at that point with revisiting the terms of the Order: whether it should have been made, or whether it should have been made
- 45 The starting point for the Tribunal engaged in that task is to consider the terms of the Order itself and whether what has happened complies with the Order or not. This may call for careful construction of the terms of the Order, both as to what the Order required and as to the scope of the Order in terms of the consequences of non-compliance, particularly in cases where there are multiple claims or multiple parties. If there is an ambiguity the approach should be facilitative rather than punitive, and any ambiguity should be resolved in favour of the party who was required to comply. However, what the Tribunal cannot do is redraft the Order or construe it to have a meaning that it will not bear, though its words should of course be construed in context.
- 46 Next, the test to be applied is as to whether there has been material non-compliance, that being a qualitative rather than a quantitative test.”
26. *Depending on how an order is drafted, partial non-compliance may result in the whole claim being struck out: Royal Bank of Scotland V Abraham UKEAT/0305/09/DM.*
27. *In Mohammed v Guy’s and St. Thomas’ NHS Foundation Trust [2023] EAT 16, in the context of an unless order requiring particularisation of a number of different complaints, I noted the consequences that may arise from non-compliance with part of an unless order that requires a number of things to be done, depending on how it has been drafted:*
- “16. The rule draws a clear distinction between orders in respect of which non-compliance will result in the dismissal of the “claim” and those where non-compliance will result in the dismissal of “part of it”. We consider the reference to the “claim” means the entirety of the complaints set out in the claim form, just as the rule contrasts the “response” or “part of it”. Thus, where there are a number of complaints

in a claim form, such as complaints of direct race and direct disability discrimination, an unless order requiring particularisation of both complaints could provide that if there is non-compliance the “claim” will be struck out or that only the “part” of the claim in respect of which there is non-compliance will be struck out. If an order is made of the former type and the party provides particulars of one claim but not the other, the entire claim will be struck out, whereas if the order is of the latter type only the complaint in respect of which there has been non-compliance would be struck out. ...

28. *It is not necessarily an error of law for an employment tribunal to make an order that will result in the entire claim being dismissed if there is a failure to comply with any one of a number of requests for additional information in respect of different causes of action, or where sufficient information had been provided in respect of one or more of the complaints. However, generally it will be proportionate to limit the dismissal to any cause of action in respect of which there is a material failure to provide additional information. Any unless order is potentially of draconian effect, but that is especially the case if a complaint that was sufficiently particularised and/or in respect of which the requested particulars have been provided will be struck out because of a failure to comply with a request for additional information in respect of a different complaint. An order dismissing the entire claim if there is a material failure to provide additional information in respect of any one of a number of requests will generally only be appropriate where there has been serious ongoing default in compliance with the orders that suggests that the claimant is refusing to engage with the tribunal process and there has been express consideration of why such a draconian order is required when a more focussed order could be made.”*

28. *In Johnson v Oldham Metropolitan Borough Council UKEAT/0095/13/JOJ Langstaff J held:*

“I accept that, in any case where the consequences of non-compliance with an unless order fall for consideration, all is likely to ... depend [on] the precise terms of the order. ...

The phrase used by Pill LJ in Marcan was, “...any material respect”: I would emphasise the word “material”. It follows that compliance with an order need not be precise and exact. It is agreed by counsel before me that Employment

Judge Feeney in adopting a test of substantial compliance therefore adopted one in accordance with the law. I would make this comment however: “material” may be a better word than “substantial” in a case in which what is in issue is better particularisation of a claim or response. That is because it draws attention to the purpose for which compliance with the order is sought; that it is within a context. What is relevant, i.e. material, in such a case is whether the particulars given, if any are, enable the other party to know the case it has to meet or, it may be, enable the Employment Tribunal to understand what is being asserted. To use the word ‘substantial’ runs the risk that it may indicate that a quantitative approach should be taken: thus, where 11 matters must be clear to enable a party to deal fairly with a claim, of which 9 have been provided but not 2, which remain necessary, compliance has not materially been provided because the purpose of seeking compliance has not been achieved in the context; the other party still cannot obtain a fair trial. To adopt a quantitative approach may erroneously lead the Judge in such a case to conclude that there had been sufficient compliance (9 out of 11) even if the further particulars remained necessary before a fair trial could take place. Substantial compliance has thus in my view to be understood as equivalent to material compliance not in a quantitative but in a qualitative sense.

29. *In Wentworth-Wood HHJ Richardson considered the procedure to be adopted when making the stage 2 decision whether to issue a notice of non-compliance:*

“An Employment Judge, before causing notice to be given under Rule 38(3), must be satisfied that there has been material non-compliance with the Order. But there is no mandatory process to be followed. The Employment Judge’s only duty before giving notice is to comply with the overriding objective, which requires cases to be dealt with fairly and justly. In some cases the Employment Judge may be able to see clearly from the file or from correspondence that an Order has not been complied with. In such a case the Employment Judge is entitled to give notice without further reference to the parties. But if there is doubt - for example in a case such as this, where one party writes to the Employment Tribunal to allege that there has been non-compliance with an Unless Order - the Employment Judge will give the other party an opportunity to comment. If there is still doubt, and the Employment Judge wishes to hear argument, the matter may be considered at a hearing.

Case Numbers: 3303216/2021 and others (see schedule)

Fairness requires that if the matter is to be considered at a hearing the parties concerned should have sufficient notice of the issue to prepare for it.

...

32. *Appeals concerning unless orders are too large a part of the diet of the EAT. It may be helpful to draw the threads together, although not with the aim of discouraging reading the judgments I have referred to above for their full subtlety.*

33. *The following seem to me to be the key points:*

...

Stage 2 - Giving notice of non-compliance

33.7. *at this stage the employment tribunal is giving notice of whether there has been compliance – it is not concerned with revisiting the terms of the order*

33.8. *particularly if there has been some asserted attempt at compliance, careful thought should be given to whether an opportunity should be given for submissions, in writing or at a hearing, before the decision is taken*

33.9. *the question is whether there has been material compliance*

33.10. *the test is qualitative rather than quantitative*

33.11. *the approach should be facilitative rather than punitive*

33.12. *any ambiguity in the drafting of the order should be resolved in favour of the party who was required to comply ...”*

THE UNLESS ORDER – PART 1

13. The first element of the respondent's argument I consider to be relatively straightforward. Their position is that a number of the claimant's claims (in the sense of claims submitted under individual case numbers, which I will refer to as “cases”) are simply not referred to at all in his purported compliance with the unless order. The order required each allegation to be set out by reference to a “case number” (later varied to include submission number). If a particular case number or submission number does not appear in the claimant's purported compliance then it must follow that the allegations contained within that case (whatever they might be) have not been included in the claimant's purported compliance and must therefore have been dismissed under the notice or order of 10 May 2024.

Case Numbers: 3303216/2021 and others (see schedule)

14. I indicated previously that I considered this argument to contain “*strong and persuasive points*”, but that I wished to provide the claimant with a final opportunity to respond to it in writing.
15. The claimant says that my order contained in its schedule 17 claims, but the order itself refers to (at least) 20 claims. He says that he no longer has access to the respondent’s letter of 3 May 2024 so cannot cross-refer what particular cases are referred to. He says “*the referenced document is from over 18 months ago and is no longer available in his email account.*” He complains of the respondent’s use of document download sites to provide electronic bundles, and says that he has had to “second guess” what the respondent is referencing. He does not suggest that he has asked the respondent for a further copy of their letter. In explaining his response to the unless order, he says “*The Claimant did not know which Claim Numbers relate to the specific Case Numbers.*” and “*The claimant was mindful not to complete the table based on guessing.*” He says he made requests of the tribunal but “*the tribunal has failed to clarify this*”. He concludes this section of his response, saying:

“Ultimately, the lack of clarity preventing the Claimant from completing the Table of Allegations, particularly in reference to the above Case and Claim Numbers.

The Claimant actioned this to the best of his ability reflecting the lack of clarity.

It would be unreasonable and unjust to sanction the Claimant for perceived deficits of the Table of Allegations when the Claimant had no ability to force the Tribunal to release the information and did his utmost to engage with the Tribunal to clarify this.

In fact, despite it being over two years since these claims were submitted, it remains an unknown of which Claim Number corresponds to which Case Number. This has affected the Claimant’s ability to manage the claims, relating to these claims ...

This deficiency is particularly relevant in view of the Unless Order. It is clear from that Orders that the Case Number MUST be included in the Table of Allegations.

It would appear unreasonable for the Tribunal to knowingly place the Claimant in a position where he could not meet the requirements of the Unless Order.”

16. As far as I can tell, this amounts to an acceptance by the claimant that there were certain cases he had brought that were not referred to at all in his purported compliance with the unless order. But he says the reason for that is that the tribunal never told him what his case numbers were (this must relate to the position at the time of his purported compliance with the unless order, not

Case Numbers: 3303216/2021 and others (see schedule)

the later question of which case numbers the respondent was suggesting had not been referred to in the purported compliance with the unless order).

17. It seems to me that where the fact of non-compliance (or material non-compliance) with an unless order is established there is little if any room for a suggestion that there was good reason for the non-compliance. That may come into play in later applications, but has at best a very limited role in determining whether there was material non-compliance.
18. It is correct to say that there have been complications along the way regarding initial acceptance and registration of some of the claimant's claim. Perhaps that is inevitable when such a volume of claims are received. When referring to the "lack of clarity" from the tribunal on case numbers, the claimant relies on Appendix 2 of his submission. The claimant says *"The Claimant has advised the Tribunal that the six claims submitted in November 2023 were unduly delayed and secondary to the combined management the Claimant remains unable to link the Case Numbers to the Claim Numbers, despite this being a prerequisite for the Table of Allegations."* The claimant says *"These six claims were submitted on the same day (1st November 2023) Automatic acknowledgement was received (with all of the emails being received within a 68-minute window) As the submissions were not linked to a specific Case Number, this prevented the Claimant referencing the specific Case Numbers within the Table of Allegations as required by the Tribunal Order."*
19. Submitting six claims on the same day seems unlikely to be conducive to straightforward administration of those claims. The claimant is, however, able to identify what he calls "claim numbers" for them, which I think is the submission reference that he would have received at the time of submitting the claim. He goes on to identify six case numbers he says I provided during the course of a hearing, but says *"the claimant was unable to link these case numbers to the specific claims made"*. Those case numbers are:

3312616/2023
3312618/2023
3312620/2023
3312687/2023
3312688/2023 and
3312689/2023

20. The case numbers in respect of which the respondent makes its application on this point are (using the individual numbering from the letter of 3 May 2024):

6	3303216/2021
9	3304381/2022
13	3315470/2022
15	3312616/2023
16	3312618/2023
17	3312620/2023
18	3312687/2023

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19 3312688/2023
20 3312689/2023

21. Thus the first three claims referenced by the respondent are not ones the claimant says he has any difficulty with case numbers for. The last six are.
22. What the claimant overlooks in this is the variation that was made so that he could use submission numbers rather than case numbers. He has never been in any doubt as to the submission numbers. Indeed, I note that the point he is now making is the very reason why that variation occurred. In the relevant order I include in the reasons the following:

“The claimant refers to claims submitted in November 2023 for which he only has submission rather than claim numbers. The circumstances of those claims are unclear to me. The claimant refers to being at a disadvantage in not knowing the relevant case number. The order above provides for the claimant to provide by reference to submission numbers if he does not have or cannot identify a case number.”

23. That is essentially the exact difficulty that the claimant now identifies, which was identified by him at the time and in respect of which a variation of the order was explicitly made.
24. As I have said before, any detailed analysis of the claimant's 1,200 page purported compliance with the unless order is impractical. That is one of the reasons why this situation has arisen in the first place. But it is possible to do an electronic search to see if particular case numbers (or submission numbers) are mentioned.
25. I have conducted a search of the document purporting to comply with the unless order against the case numbers identified above and the submission numbers provided by the claimant.
26. The first three appear, but only by the relevant claim form being included as an appendix to the document. There is nothing in relation to them that would amount to compliance with the order.
27. The final six are not referred to at all by case number (consistent with the claimant's position that he was unsure what case numbers they had been allocated). On a search by their submission number, they too appear as appendices, and there is a section where the claimant says that he does not have their case numbers, but there is nothing in respect of them that complies with the requirements of the order.
28. I therefore accept the respondent's submission that cases:

3303216/2021
3304381/2022
3315470/2022
3312616/2023

3312618/2023
3312620/2023
3312687/2023
3312688/2023 and
3312689/2023

have been dismissed automatically on failure to comply with the unless order.

THE UNLESS ORDER – PART 2

29. The second element of the respondent's position in relation to the unless order is more complex.
30. They say in their letter of 3 May 2024:

"The Claimant has included tables that have:

- a. no detail of what the allegation itself is; or*
- b. no case number for the claim that contains the allegation (and no submission number in the alternative); or*
- c. no dates to the action that gives rise to the allegation; or*
- d. no details of the Respondent's employees / officers that the Claimant alleges carried out the action.*

This is in breach of the clear instructions within EJ Anstis' Order of 6 November 2023. By way of example, this applies to the tables on pages 49-50, 53-55, 105-107, 90-104, 108-109, 113-116, 595-596, 598-618, 621-622, 681-682, 745-746, 748-749, 751 and 754-755 of the Claimant's Table.

In addition, the Claimant has included tables where there is no case number referred to at all, and it is not possible for the Respondent to identify where the Claimant says these allegations arise: see pages 51-52, 110-111, 135-137, 155-160, 715-718, 658-667 and 637-646."

31. The claimant does not really address this point in his submissions, but in principle I accept the respondent is correct in the examples they give. For the first set of examples the claimant has typically said "*specific dates to be added following disclosure*" and "*additional individuals to be added following disclosure*". In general these seem to contain no specific allegations at all, and look almost as if they are placeholder entries that the claimant never got round to completing. The respondent is also correct in its reference to the second set of examples it gives.
32. While leaving the format of the table as a matter for the claimant, the original order required the following information to be given (along with other information):

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- “(i) the case number of the case that contains the allegation,*
- (ii) the date the action that gives rise to the allegation occurred,*
- (iii) which of the respondent’s employees or officers carried out the action ...”*

33. The unless order provided that *“any allegation not contained in a table of allegations ... prepared by the claimant in accordance with paras 6 and 7 ... will stand dismissed without further order”*.
34. Does the fact that some of the allegations in the table of allegations do not comply with para 7 mean that all allegations are to be dismissed under the unless order? The respondent says that it does. The claimant has not engaged with this point in his submissions.
35. The key points at this stage from Minnoch appear to be:
- “33.9. the question is whether there has been material compliance*
- 33.10. the test is qualitative rather than quantitative*
- 33.11. the approach should be facilitative rather than punitive*
- 33.12. any ambiguity in the drafting of the order should be resolved in favour of the party who was required to comply ...”*
36. The distinction would seem to be whether it is the individual allegation that has to comply with the requirements of paras 6 and 7 or the table of allegations as a whole. If the former, it may be possible to say that some allegations have been struck out, but not without the detailed analysis that I have found to be impossible with a 1,200 page table of allegations. If the latter, then the respondents say that every allegation is struck out because of a failure of any element of the table of allegations to comply with paras 6 and 7.
37. I consider that the former is the better approach, and more in accordance with Minnoch. In the first place, any ambiguity has to be resolved in favour of the party who was required to comply, so if there is more than one way of reading the order (as I consider there is in this case), it is to be read in the way most beneficial to the claimant, and *“the approach should be facilitative rather than punitive”*. Johnson and other authorities emphasise consideration of the context, which in this case is understanding and being able to case manage individual elements of the claim, not necessarily the claims as a whole. The order could be requiring compliance at the level of the individual allegation or across the table of allegations as a whole. The approach more in line with Minnoch is to read it at the level of the individual allegation.
38. Of course, this would still mean that there are individual allegations which are struck out for non-compliance with the order, beyond simply the question of whether the case or submission number was contained in the table of allegations. The examples given by the respondent would seem to be such

matters. However, that would require detailed consideration of the table of allegations, which I do not consider to be practicable. While noting that there will be more that has been struck out as a result of the unless order, in the light of my decision on the question of a fair trial it is not necessary to consider this in any more detail.

IS A FAIR HEARING POSSIBLE? – THE LAW

39. Rule 18(1)(e) says:

“The tribunal may ... strike out all or part of a claim ... on ... the ground that the tribunal considers that it is no longer possible to have a fair hearing in respect of the claim ...”

40. The most recent authority on this point is Leeks v University College London Hospitals NHSFT [2024] EAT 134, in which we find (at para 24) that “*a fair trial must take place within a reasonable period*”. The judgment cites from Peixoto v BT (UKEAT/022/07), in which HHJ McMullen QC held that a tribunal “*was correct to form the view that a fair trial was not possible and to strike ... out [the claim]*” where “*it could not find any point in the foreseeable or even the distant future, when a trial might be likely*”.

IS A FAIR HEARING POSSIBLE?

41. These are the “further observations” in my order of 10 May 2024 that I drew the claimant’s attention to on this point:

“23. *This decision concerns postponement of a preliminary hearing convened to consider what issues are raised in the claimant’s claims. Ahead of this hearing the claimant has submitted a 1,200 page table of allegations that he says remains incomplete. The respondent makes the point that a 1,200 page table of allegations is completely unmanageable. I agree. Neither the respondent nor the tribunal can properly be expected to address the detail of a 1,200 page table of allegations even as a matter of case management, let alone at a final hearing. Apart from anything else, as HHJ Beard put it at para 43 of Rahim v The Big Word [2023] EAT 171 “The claimant is not the only claimant before the tribunals. Other claimants and respondents need their cases dealt with. The overriding objective indicates that there should be a fair distribution between claimants and other parties of the tribunal’s resources.”*

24. *To repeat: neither the respondent nor the tribunal should be expected to deal with detailed case management, let alone a final hearing, on the basis of a 1,200 page table of allegations.*

25. *This should not come as a surprise to the claimant. In my order of 20 March 2024 I observed that “a table of allegations stretching*

to more than 400 pages [which at that point was what the claimant indicated it was] appears on the face of it to be completely unmanageable and simply not capable of being addressed by an employment tribunal whether by way of case management or in an eventual hearing” and said “By the May hearing the claimant must consider whether it is really practicable for such a substantial range of allegations to be heard and how (if at all) this could be done”.

26. *What has happened since then has included (i) a tripling of the length of the table of allegations, (ii) a number of applications by the claimant to the effect that the table of allegations remains incomplete and (iii) an application by the claimant to postpone a two-day case management hearing on the basis that he is unfit to attend tribunal.*
27. *If the claims were to proceed on the basis of a 1,200 page table of allegations they would, to the best of my knowledge, be the most complicated and lengthy claims ever addressed by a tribunal. The breath and scope that the claimant intends for his claims stands in stark contrast to his present position that he is unable to attend even a two-day case management hearing in the next six months.*
28. *I urge the claimant to reflect on this, with the benefit of legal advice if at all possible. It remains the case that if the claims are to proceed in the way he wishes them to be heard he will have to explain to the tribunal how he thinks they can properly be case managed and eventually heard, because at present I do not see any basis on which this could practically be done. I do not rule out case management in general terms, but case management at the level of individual allegations appears to me to be impossible. If the claims cannot properly be case managed or heard then they are at risk of being struck out.”*

42. The claimant says this:

- “6. *In response to point 9.b. (3303216 2021 and others - Order - 6 November 2025) the Claimant makes the following points:*
 - a. *A fair trial is possible as the Claims have been elucidated and been available to the Respondent primarily with the submission of the relevant ET1 forms and with the amalgamated document submitted in April 2024. The Respondent cannot reasonably contend this information has not been available.*
 - b. *The Claimant has further consolidated the Table of Allegations, removing duplications and condensing Claims*

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into a more manageable form. This document has been available to the Tribunal and Respondent since November 2025. (During the review for this document, the Claimant has noted he neglected to include the previous Tables and Claim numbers, the condensed Table relates to. These have been added to the Table submitted with this document)

- c. *Appendix 1 addresses the linking of the Table of Allegations and Claim numbers (again reflected the incomplete data available to the Claimant)*
- 7. *Although, the claim may seem unmanageable at first glance, it is, in fact, relatively straightforward.*
- 8. *The major portion of the claim relates to unfair dismissal:*
 - a. *The Claimant contends this was unlawful as he was prevented from attending the initial hearing, secondary to the employer's decision to reschedule the hearing without advising the Claimant.*
 - b. *A finding of gross misconduct was not an outcome available to the employer, based on the allegations levied.*
 - c. *Continuing with the initial hearing when the employer became aware of their rescheduling error, particularly when not allowing the Claimant to contest the heard allegations is against natural justice (a full new independent hearing was the only option)*
 - d. *Holding an 'appeal' hearing rather than organising a new hearing when the error was the fault of the employer is inherently unfair and unjust.*
 - e. *Holding the 'appeal' hearing when the employer was aware the Claimant was caring for a critically ill child (who was, in fact, resident under the care of the Respondent) is unreasonable.*
 - f. *Holding a new hearing without medical advice and consideration of reasonable adjustments, resulting in the employer cancelling the new hearing after it commenced is inappropriate and resulted in further detriment to the Claimant.*
 - g. *Failing to consider the Claimant was no longer able to perform his role and refusing to consider ill-health*

retirement prevented the Claimant receiving contractually (pension) support.

- h. The Respondent contends the decision was reasonable and they would have reached the same decision even if the Claimant had been allowed to participate. Such a position is fundamentally flawed. If this position is supported, this would allow any employer to hold hearings without the employee being present and justify dismissal without any possibility of fair representation. Such a position is untenable.*

9. Further important claims relate to:

- a. Failure of the employer to support a disabled employee in the workplace and access support to allow his continued employment. Ultimately, resulting in the Claimant's ill-health and inability to work.*
- b. Failure to protect an employee from bullying and harassment.*
- c. Victimisation following whistleblowing."*

43. The claimant says *"Although, the claim may seem unmanageable at first glance, it is, in fact, relatively straightforward."* In the paragraphs that follow I will explain why that is not the case, but for now an example may suffice. The final point made by the claimant in the passage cited above is *"victimisation following whistleblowing"*. In his Appendix 1 (apparently the current authoritative version of his claims) that identifies 8 different tables in his purported compliance with the unless order that contain his whistleblowing claims. The first of those tables covers a period of a year, identifies more than 50 relevant policies or legal obligations and is said to be direct discrimination in relation to five different disabilities as well as by association, a failure to make reasonable adjustments, indirect discrimination in relation to five different disabilities, discrimination arising from disability in respect of 12 "matters arising", harassment, "side-lining", victimisation, violation of human rights, unfair dismissal and failure to follow ACAS guidelines. Whistleblowing is mentioned, but there is no clear identification of any resulting detriment independent of the discrimination allegations. This is only one of the relevant eight tables in respect of this element of this claim.

44. The claimant's view that *"the major portion of the claim relates to unfair dismissal"* is initially promising. If the claim was simply one of unfair dismissal then I doubt these difficulties would have arisen in the first place, but unfortunately any idea that the claimant may prioritise or limit his claim to one of unfair dismissal is undone by what follows. There are *"further important claims"*, one of which I have addressed above. So, as I understand it, saying

“the major portion of the claim relates to unfair dismissal” is not any attempt by the claimant to limit or restrict the range of his claims.

45. No part of the claimant's claims have been withdrawn by him, but the significance of this narrative of his claims seems to be that they are now to be read by reference to Appendix 1 in his submissions of 16 January 2026. In turn, this seems to function as a kind of index or guide to his earlier 1,200 page submission. This index is broken down into 36 chapters, referring to 221 “tables”.
46. I do not think that Appendix 1 goes anywhere towards showing how a fair trial of these allegations can be possible. Arguably it further complicates matters.
47. The claimant is to some extent correct to say *“Claims have been elucidated and been available to the Respondent primarily with the submission of the relevant ET1 forms and with the amalgamated document submitted in April 2024”*. But the question is how such claims can be fairly heard?
48. The difficulties involved will be familiar to everyone who has had involvement with the case, and have been spelled out across multiple tribunal orders, in particular my “further observations” section.
49. The claimant has taken on a monumental task with an incalculable array of claims of different kinds in relation to different matters against the respondent. I do not use the word “incalculable” lightly in this situation. I find it impossible to have any idea of how many different claims the claimant is bringing.
50. Quite how this series of claims is to be even case managed, let alone heard, has been at issue for at least two years. Nothing has been withdrawn. A number of distinct case numbers have been dismissed for failure to comply with the unless order, but the reason why those were struck out is they were never included in the claimant's 1,200 page submission in the first place, so that hardly simplifies things.
51. Even in the best possible circumstances I do not see how such a substantial array of claims could be case managed, or heard, but it is clear that we are far from the best possible circumstances. The claimant is simply not in a position to pursue claims of the scope he wishes to bring.
52. One point suffices. The adjustments required for the previous claims brought by the claimant included: *“subject to individual exceptions agreed by the claimant, hearings in this case shall be for a maximum of two days at a time, with a three week gap between hearings.”* As a result the final hearing took around 18 months for somewhere between 20-30 allegations. The claimant's position is that his medical conditions are long-term, and it appears unfortunately that the claimant's personal circumstances have become even more difficult since then. While the claims the claimant now brings are “incalculable”, they are orders of magnitude greater than those in the claims that have been heard.

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53. In the circumstances I have outlined I see no way in which either the claims can effectively be case managed or a fair trial of them conducted at any point in the future. Any claims not dismissed by virtue of the unless order are struck out on the basis that it is no longer possible to have a fair hearing in respect of them (and, for the avoidance of doubt, it seems inevitable to me that the claims dismissed by virtue of the unless order would, if they had continued, also have been struck out on the basis that a fair trial is not possible).

Approved by Employment Judge Anstis

Date: 23 February 2026

Sent to the parties on: 5 March 2026

For the Tribunals Office

SCHEDULE OF CLAIMS

3303216/2021

3323728/2021

3301208/2022

3304381/2022

3309598/2022

3315448/2022

3315452/2022

3315455/2022

3315463/2022

3315468/2022

3315470/2022

3312616/2023

3312618/2023

3312620/2023

3312687/2023

3312688/2023

3312689/2023