



EMPLOYMENT TRIBUNALS

Claimant: Mr David Thornhill

Respondent: Amey Services Limited

Heard at: Liverpool (Heard Remotely by CVP)

On: 16 and 17 February 2026

Before: Judge Cowx

Representation

Claimant: Did not attend

Respondent: Mr Michael McLaughlin, Solicitor

JUDGMENT

1. The claimant's claim 2406396/2024, containing complaints of direct disability discrimination, harassment and victimisation, is struck out.
2. Specifically, the claimant's complaint regarding a 2023 pay award was not presented within the applicable time limit. This complaint is struck out under Employment Tribunal Rule 38(1)(a) because the claimant has no reasonable prospect of success in establishing it would be just and equitable to extend the time limit.
3. The claimant's complaint regarding a 2023 pay award should have been included as part of claim 2405712/2023 if the claimant wished to proceed with it. Allowing the claimant to bring this complaint as a fresh claim is an abuse of the Tribunal process. As an abuse of process this complaint has no reasonable prospect of success and is struck out under Employment Tribunal Rule 38(1)(a).
4. The claimant's complaint regarding emails from the respondent's IT department should have been included as part of claim 2405712/2023 if the claimant wished to proceed with it. Allowing the claimant to bring this complaint as a fresh claim is an abuse of the Tribunal process. As an abuse of process this complaint has no reasonable prospect of success and is struck out under Employment Tribunal Rule 38(1)(a).

5. The claimant's complaint regarding emails from the respondent's IT department is also struck out under Employment Tribunal Rule 38(1)(a) because it has no reasonable prospect of success.

6. The entirety of claim 2406396/2024 is struck out under Employment Tribunal Rule 38(1)(d) because it has not been actively pursued.

REASONS

1. The claimant brings a claim for direct disability discrimination, harassment and victimisation pursuant to sections 13, 26 and 27 of the Equality Act 2010. He alleges that he was treated less favourably than non-disabled employees when not given a pay rise in 2023. He also alleges that he suffered harassment and victimisation by the respondent when the respondent's IT department contacted him by email and asked him to run a security scan on his work laptop.

2. This claim was submitted on 28 September 2024 when the claimant's first claim against the respondent (number 24057152/2023) was still in being and that first claim included a complaint regarding pay award in 2022.

3. The respondent brought an application to strike out this claim on the basis that it is an abuse of process, alternatively it has no reasonable prospect of success, it has been pursued in an unreasonable manner, and it has not been actively pursued. The respondent also contends that the 2023 pay award element of the claim should be struck out because it was not presented within the time limit and it is not just and equitable to extend the time limit.

Postponement Application

4. Before hearing the respondent's strike out application the Tribunal first had to decide whether to postpone this public preliminary hearing upon an application for the same by the claimant.

5. This was the third such application made by the claimant.

6. The claimant submitted this claim, his second Employment Tribunal claim against the respondent, on 28 September 2024. On 28 March 2025 the Tribunal listed the case for a preliminary hearing on 27 August 2025. The primary purpose of that hearing was to consider jurisdiction because of time limits and strike-out and/or deposit orders. In regard to that hearing the claimant was ordered to provide evidence of income and expenditure by 11 April 2025. In regard to that particular order, the claimant has consistently failed to comply with it.

7. On 7 April 2025 the claimant applied for a postponement of the August preliminary hearing. The grounds for the application were that he was struggling with mental health issues and the effects of Long Covid. He said that he did not have the energy at that time to manage the requirements of the instant claim and his appeal against the Tribunal's decision to dismiss his first claim.

8. This postponement request was refused by a judge on 8 May 2025. He

made a further application on 26 May 2025 and on this occasion the Tribunal granted his request, and the preliminary hearing was postponed to 27 August 2025.

9. On 16 June 2025 the claimant lodged an application for a further postponement of the hearing scheduled for 27 August 2025. Again, this was on health grounds in that he asserted he was not fit at that time to fairly present his case.

10. On 27 June 2025 his application was granted and the preliminary hearing postponed again to 21 November 2025.

11. On 29 September 2025 the claimant applied for his claim to be stayed pending the outcome of his appeal to the Employment Appeal Tribunal and he also applied for another postponement of the November 2025 preliminary hearing. On 10 November 2025 the Tribunal refused the stay application but based on further medical evidence the judge granted a further postponement of the preliminary hearing until 16 and 17 February 2026. Two days were set aside for the preliminary hearing as a reasonable adjustment for the claimant, taking into account his need for additional breaks so that he could participate effectively. The hearing was also converted to a remote hearing by video as a further adjustment for the claimant.

12. On 18 January 2026 the claimant requested that the matters to be determined on 16 and 17 February 2026 be dealt with on the papers. This was opposed by the respondent. On 13 February 2026 the claimant contacted the Tribunal by email to inform it that he was unfit to participate in the preliminary hearing and would not be attending it. He requested a further postponement. The duty judge dealing with that correspondence decided to defer a decision until today's hearing.

13. I have read the medical evidence produced by the claimant in support of this and previous postponement applications. The first is from Dr Abrahamson dated 30 October 2025 which was taken into account by the judge who granted the postponement to today's date. It appears that Dr Abrahamson is not the claimant's GP, but he knew him through contact with him at the Knowsley Long Covid Service. The letter details the claimant's Long Covid and widespread body pains which were to be investigated further, although subsequent medical evidence is silent on those symptoms. The emphasis in this letter is upon symptoms primarily related to ME/CFS (Chronic Fatigue Syndrome) which according to Dr Abrahamson is "*an energy limiting proven physiological condition*" which causes "*physical fatigue, weakness and cognitive impairment commonly referred to as 'brain fog'.*" It was further stated that "*Concentration can be significantly impaired. It is important for patients with this condition to remain within their personal energy window to prevent exacerbation of their symptoms and overall function.*"

14. Dr Abrahamson added:

David has demonstrated a significant decline in his fatigue and cognitive impairment symptoms today since he was last seen by me earlier in the year. He feels that this has been directly related to the stress he has been

under related to employment tribunals this year requiring focus and concentration on large volumes of reading materials and preparation outside of his current sustainable capabilities. This is entirely in keeping with what I would expect in a patient with ME/CFS under conditions of ongoing stress requiring levels of physical and cognitive activity outside of their energy window.

15. Dr Abrahamson then addressed reasonable adjustments:

It is completely feasible that a patient with these conditions may find it impossible to undertake the level of cognitive workload required to undergo tribunal tasks with time limited employment. His requests for shorter sessions, remote attendance and increase in preparation time seems [sic] entirely reasonable given his condition and energy limitations, to give him a fair chance to present his case in comparison with a healthy unaffected person. Expectations to manage the level of work required without reasonable adjustments would go against the medical advice he has received to operate within the individual energy window and may further exacerbate his symptoms potentially causing further permanent disability.

16. I remind myself here that the reasonable adjustments suggested by Dr Abrahamson have already been granted. Shorter sessions (i.e. more breaks over two days instead of one) and remote attendance were granted by the Tribunal, and the postponements gave him over 4 months of additional preparation time.

17. On 12 February 2026 the claimant's GP, Dr Urquhart provide the claimant with a letter supporting his application for a further postponement. It states that the claimant has been suffering from head pressures which have been exacerbated by the stress of the forthcoming Tribunal hearing. Dr Urquhart's letter is silent on the nature and seriousness of the condition, its medical causation, treatment, prognosis and opinion on his ability to participate in the hearing. She merely states that the claimant has been seen in her surgery for the condition and he is due for a review "next week".

18. On 15 February 2026 Dr Abrahamson had a further consultation with the claimant and provided another letter to the Tribunal which is worth setting out in full here:

I consulted privately with David today, who has demonstrated a further deterioration in his medical conditions (ME/CFS/Long Covid/Depression and anxiety). He feels unable to attend his hearing this week resulting from this.

He has been experiencing a worsening in his physical and psychological symptoms over the past few months, particularly over the past few weeks, since it has become evident that his request for reasonable adjustments related to his conditions do not appear to have been taken into account. He has noticed worsening of headaches, for which he is currently under investigation via his NHS GP, that he feels are directly exacerbated by

stress. He has also described worsening gastrointestinal symptoms, worsening fatigue, cognitive dysfunction, body pains, weakness and worsening mental health with suicidal ideation. These symptoms are in keeping with his diagnosis of ME/CFS as part of Long Covid, which is known to flare related to physical, psychological and emotional triggers. These flares can take weeks to months for recovery to occur, and this may be delayed by further stress and triggers. He is understandably concerned that the effect of the stress related to the hearing may cause permanent deterioration in his condition which is feasible given what we know about this condition.

In order to prevent deterioration in his condition, David requires that his potential triggers are kept to a minimum. This would include a period of recovery from his current exacerbation which may take a few months. It also would seem reasonable to consider his limitations allowing more preparation time and shorter sessions with recovery time allowed where possible.

19. I note that Dr Abrahamson's letter is based on what is reported to him by the claimant. One obvious factual error is the reference to reasonable adjustments not being "*taken into account*". The reasonable adjustments suggested by Dr Abrahamson were agreed and adopted by the judge who ordered the postponement to today's date. Dr Abrahamson reports symptoms that are described to him by the claimant and based on this Dr Abrahamson suggests that the claimant should keep potential triggers to a minimum and that he needs a period of recovery of perhaps a few months. What is lacking in Dr Abrahamson's letter is any indication or opinion on whether the claimant will ever be fit to deal with his claim and the issues or applications arising from it.

20. The impression given by Dr Abrahamson is that the trigger for deterioration in the claimant's health is his claim and the Tribunal proceedings he chose to embark upon. The inference I draw from Dr Abrahamson's letter is that the claimant will never be well enough to face up to these proceedings even if given months to recover from what he seems to regard as a relapse.

21. The doctor's letter does not reveal any degree of insight into the extent of the claimant's previous involvement with this Tribunal and his ability to participate in proceedings relating to his first claim, his appeal and his activity thus far on the instant claim. If Dr Abrahamson was able to demonstrate such insight and still insisted litigation is having a negative impact on the claimant's health, then his opinion might carry more weight. Because this letter lacks evidence of such insight and because Dr Abrahamson appears to have accepted as true everything the claimant has told him, when it is not (i.e. reasonable adjustments), I give it little weight when determining this postponement application. Furthermore, the gist of Dr Abrahamson's evidence is that the claimant will never be well enough to represent himself in these proceedings and therefore another postponement will serve no useful purpose.

22. This above medical opinion, or what I infer to be the opinion, does not go in the claimant's favour. I am also not satisfied that Dr Abrahamson has the benefit of the full picture. It is evidence from the documents contained on the court file that the claimant has had no or no obvious difficulty in turning his mind

to his case when he needs to. He has written numerous letters or emails seeking postponements and a stay of proceedings. He has also spent a significant amount of time and energy making complaints about the respondent, its solicitors and indeed the Tribunal. I of course respect the claimant's right to make such complaints, but the effort expended on these complaints and other correspondence intended to delay or halt these proceedings contradicts the fundamental basis of his application to postpone this case further.

23. I accept that the claimant's health issues may make participation in these proceedings harder for him. For this reason, the Tribunal has granted the adjustments he requested through Dr Abrahamson. The Tribunal has done all it can to create as level a playing field as possible.

24. This is the third application to postpone this preliminary hearing which has already been delayed by 5½ months. Neither the claimant nor his doctors have provided any reassurance that further delay will improve the claimant's ability to deal with the respondent's applications for strike out or deposit orders and indeed to present his case at a final hearing. If the claimant is as unfit as he claims, then a further postponement will achieve nothing. His own medical evidence does not provide any basis for optimism.

25. But again, I give limited weight to the medical evidence. The letters from Dr Urquhart and Dr Abrahamson are the honest statements and opinions of medical professionals who are not equipped with the full facts. They have formed their views based on the symptoms presented by the claimant and what he has told them about the Tribunal proceedings, but they seem to be unaware of his degree of activity in these proceedings to date which has not been impeded by his disability.

26. I have had regard to the overriding objective of the Employment Tribunal Rules of Procedure. The objective is to deal with cases fairly and justly. Fairness and justice applies to both sides, and not just to a party which is unrepresented.

27. The claimant is fully aware that this preliminary hearing is taking place and the purpose of the hearing. Indeed, it was his preference that the applications be dealt with by a judge on the papers. He is aware that a decision on his postponement application will be made today with or without him and he has chosen to remain absent and once again citing health issues.

28. The claimant's substantive claims are not complex and nor are the grounds of the respondent's strike out applications. The claimant is not unfamiliar with proceedings in this Tribunal having taken one claim to final hearing already and from there to the Employment Appeal Tribunal. Even taking into account his health and what his doctors say about it, it would not be proportionate to delay these proceedings further.

29. It would be unjust to allow this case to hang over the head of the respondent with no hope offered by the claimant that it will be heard within a reasonable period of time or indeed at all. Delay of course may also have an adverse effect on the quality of witness evidence, and this would also be unfairly prejudicial to the respondent when the delay is out of its control.

30. For the aforementioned reasons the claimant's postponement application

was refused.

The Applications

31. Both parties have made strike out applications. It was previously directed that the judge presiding over this hearing would decide the order in which the applications will be decided, having in mind the overriding objective.

32. I decided that because the respondent's application was lodged first in time, I would determine its application first although taking into account what the claimant had to say in his strike out application and the respondent's response to that application.

33. The claimant's strike out application is made on the basis that the respondent's solicitors had allegedly acted in a scandalous, unreasonable and vexatious manner and the application provides instances when solicitors acting for the respondent allegedly misled the Tribunal. I have examined those instances of alleged misleading communications, and I find no evidence which might reasonably substantiate such serious allegations. On each of the occasions cited by the claimant the solicitor involved was merely challenging, disputing or contradicting the claimant's position or version of events. I find nothing to suggest dishonesty or any other inappropriate behaviour, only quite routine adversarial litigation.

The Respondent's Application to strike out the claim.

34. The power to strike out a claim is set out under rule 38 Employment Tribunals Rules of Procedure 2024. The power must be exercised in accordance with the overriding objective in rule 3 of the same rules. Rule 38(1) states:

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).

35. Rule 38(2) states:

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.

36. The claimant, Mr Thornhill, has had a reasonable opportunity to make representations in response to the respondent's application to strike out his claim. Furthermore, it was his wish that the respondent's application and his own be decided on the papers. This was refused as was his application for a third postponement of this hearing for the reasons given above.

37. Mr McLaughlin supplemented his written submissions with oral submissions, dealing with each of the claimant's claims separately and the stated grounds for striking them out. Mr McLaughlin structured his submissions in the following way:

- a. The 2023 Pay Award Complaint.
 - i. Out of time and not just and equitable to extend time.
 - ii. Abuse of Process to allow complaint to proceed.
- b. Complaint about the emails from the Respondent's IT Department.
 - i. Abuse of Process to allow complaint to proceed.
 - ii. No reasonable prospect of success.
- c. Overarching grounds relating to both complaints.
 - i. Scandalous, unreasonable or vexatious conduct.
 - ii. The claim has not been actively pursued.

38. I reminded myself of the relevant case law. In **Anyanwu v South Bank Students Union [2001] IRLR 305** Tribunals were cautioned against striking out discrimination cases. Lord Steyn stated:

Discrimination cases are generally fact sensitive and their proper determination is always vital in our pluralistic society. In this field perhaps more than any other the bias in favour of a claim being examined on the merits or demerits of its particular facts is a matter of high public interest.

39. I reminded myself that consideration of whether a claim has "no reasonable prospect of success" and should be struck out is an exercise of discretion. I remind myself that the power to strike out should be exercised rarely-see **Tayside Public Transport Company Limited t/a Travel Dundee v Reilly [2012] IRLR 755**. I reminded myself that one of the reasons for this is that the Tribunal is not in a position to conduct a "mini trial". I did not hear evidence from the claimant who failed to attend as explained above, however I did review the documentary evidence which was relevant to the strike issues to be considered.

40. I also reminded myself of the guidance in **Chandhok v Tirkey [2014] WL 7254319** where it was stated there is no blanket ban on strike out applications succeeding in discrimination claims.

The 2023 Pay Award Complaint and Time Limits/Jurisdiction

41. I have found the following in regard to this proposed ground for strike out.

42. The claimant submitted this claim on 28 September 2024 after a period of conciliation which began on 18 July 2024 and ended with the issuing of an ACAS certificate on 29 August 2024.

43. It is relevant that at the time this claim was submitted the claimant was involved in a separate Employment Tribunal claim against the respondent and one of the complaints in that case was alleged discrimination based on the pay award he received in 2022.

44. The respondent announces its annual pay awards in March or April each year and without evidence to the contrary I find the 2023 pay award and individual pay rises were announced in March or April of that year. The claimant was off sick at that time and was not accessing his work issued computer regularly or not at all at this point. Nevertheless, I find it highly unlikely that he was unaware of the 2023 pay award and the fact he did not receive a pay rise. The basis of this conclusion is clearly set out in the claimant's own grounds of complaint in his form ET1 for his first claim which was submitted on 7 May 2023. In that claim he explained in detail why he felt so wronged at the 2022 pay award and what he did about that at the time. He wrote "*It has been a year since the 2022 pay award and this has been raised repeatedly without resolution.*" In that same form ET1 the claimant said pay awards were announced in March and for 2022 he saw the effect of the pay rise when he checked his April 2022 pay. Therefore, the 2023 pay award was announced before he submitted his first claim. The claimant would surely have been waiting for that announcement and he would have known shortly afterwards that he did not receive a pay rise.

45. It is the respondent's position that the claimant was aware of the 2023 pay rise issue from November 2023 at the very latest because in his written response to the strike out application dated 21 April 2025 [at 52 - respondent's preliminary hearing bundle] the claimant referred to the encounter with his colleague in what he described as his "*November 2023 tribunal addendum*".

46. In his response the claimant stated that because he was on nil pay at the time he had "*no way of knowing for sure*" that he had not been awarded a pay rise until he received a 2024 pay letter on 19 April 2024 [52]. It is his case then that three-month time limit did not begin to run until 19 April 2024, when he received a pay letter and so he was sure from that point that he was not getting a pay increase. Again, I reject that proposition for the reason I have already explained: he would have known he had not received a pay increase in April 2023 shortly after it was announced. Given his deep sense of injustice at the 2022 pay award, I am sure he would have made every effort to find out whether he had been treated in like manner in 2023.

47. Section 123(1) states that claims of the kind brought by the claimant in this case may not be brought after the end of—

- (a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

48. The operative date in regard to the act of discrimination alleged by the claimant is the date of the act he complains of i.e. the day in March or April 2023 when the respondent decided not to award him a pay rise. The operative date is not the date of the pay letter he received on 19 April 2024, even if I accepted what he says about that as true, which I do not.

49. I have not been provided with any plausible reason why the claimant delayed the bringing of this particular element of his claim as long as he did. The delay being something in the region of 17 or 18 months. When this particular part of his claim was still in-time he was in the early stages of his first Employment Tribunal claim. Therefore, such things as Employment Tribunal procedures and time limits will have been at the forefront of his mind.

50. Even if there was good reason for not including a complaint about the 2023 pay award with his first claim, the next most obvious occasion when he could and should have done so was at or shortly after the Case Management Preliminary Hearing (CMPH) on 16 October 2023 before Employment Judge (EJ) Feeney. One of the main reasons for holding a CMPH is to clearly identify the claimant's claims and the issues surrounding them that need to be decided by the Tribunal at the merits hearing. EJ Feeney's written summary of the CMPH and her Case Management Order (CMO) reveal that a significant portion of the hearing was spent on discussing the claimant's claim, which was not clearly pleaded at that time. The respondent's hearing note prepared by the attending solicitor for the respondent, Ms Grace Watson, reveals that a quite detailed discussion did take place about the claims and issues, including the 2022 pay award. The note shows that the judge made it clear to the claimant that the onus was on him to identify his complaints and that if needed he could add complaints to his claim by way of amendment.

51. The claimant disputes what happened at the CMPH on 16 October 2024 and what EJ Feeney said to him. His position, supported by his partner who observed the hearing and who provided a witness statement on 31 October 2025, is that the judge told him that he could add claims in regard to what he had raised at the hearing but if there was anything else then he would have to start a new claim.

52. I give less weight to the claimant's version of what was said at the preliminary hearing in October 2024 and the statement produced by the claimant's partner which was written over a year after the hearing. Ms Watson's hearing note is contemporaneous, written by a legal professional and employment lawyer familiar with Employment Tribunal procedure and CMPHs. What is recorded in her hearing note entirely reflects common practice at such hearings and reflects the sort of conversation and directions or assistance an EJ would give to an unrepresented claimant. The claimant has not produced any sort of contemporaneous note containing anything which might support his position, which is that EJ Feeney effectively told him he would have to bring a new claim in regard to anything not discussed at the hearing. I simply do not accept that to be a true or accurate recollection of what happened. Only the claimant knew at that stage the full range of complaints he had in mind which had

still not been clearly articulated by him to the Tribunal and the respondent. Ms Watson's hearing note mirrors what one would expect to happen at such a case management hearing, which was the judge pointing out to the claimant that it was for him to clearly identify what he was complaining about and that there was some scope for him to do so, but that a line had to be drawn under his case at some point.

53. The claimant also had a further obvious opportunity to raise his complaint about the 2023 pay award and that was the second preliminary hearing on 22 February 2024. On that occasion the claimant was represented by counsel who successfully applied to amend the claimant's claims. This was almost a year after the pay award the claimant complained about in his second claim, a claim which was not brought for another 7 months after this hearing.

54. The claimant has not provided a genuine or convincing explanation for why he did not bring his claim sooner. I find there is no proper basis for finding he would suffer injustice or prejudice in refusing to extend the applicable time limit by the significant degree he seeks. It is not therefore just and equitable to extend the time limit and it is struck out on this basis.

The 2023 Pay Award Complaint and Abuse of Process

55. The respondent relies upon the abuse rule laid down in the case of ***Henderson v Henderson* [1843] 67 ER 313**. The rule being that parties to litigation must bring forward their whole case. They will not be permitted to bring fresh proceedings about a matter which could and should have been litigated in earlier proceedings, but was omitted through negligence, inadvertence or even accident.

56. Although old law *Henderson v Henderson* remains good law which is still commonly applied. The case of ***Szucs v Greensquareaccord Ltd* [2025] EAT 110** provides a helpful and up to date analysis of the *Henderson v Henderson* rule and how it is to be applied. The EJ at first instance in that cases directed himself on the law and included reference to a review and restatement of abuse of process principles by the House of Lords in ***Johnson v Gore Wood* [2002] 2 AC 1, HL** where Lord Bingham said that the Tribunal must consider:

a. whether in all the circumstances the bringing of proceedings is an abuse of process; and

b. that the circumstances will include whether the proceedings are brought against the same defendant or respondent; whether the issue could, with reasonable diligence, have been discovered and raised in the previous proceedings; and whether the later action involves unjust harassment or oppression of the party sued.

57. Also in *Johnson v Gore Wood* the House of Lords said:

The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in

later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all.

58. Also cited by the first instance EJ in *Szucs v Greensquareaccord Ltd* was the case of ***The London Borough of Haringey v O'Brien* EAT/0004/16** in which the EAT held that the Tribunal should consider not just the events occurring prior to the presentation of a claim but also those occurring after that date but prior to the hearing of that claim. This then extends the *Henderson v Henderson* rule to situations where knowledge of an alleged discriminatory act arises after the claim is submitted and before the full merits hearing of that claim.

59. The burden of proving abuse is on the respondent.

60. In this instance I have found that the claimant knew about the alleged discriminatory act before he lodged his first claim to the Tribunal which included an essentially identical claim about pay. If I am wrong about the date when knowledge was acquired, I am satisfied that the claimant was aware of the pay rise when he discussed his claim with EJ Feeney at the CMPH on 16 October 2023 and he had knowledge of the same at the PH on 22 February 2024.

61. The claimant has not provided a convincing reason why he did not include this like complaint with his first claim, either when first submitted or later by amendment. He had the capability and knowledge to do so as he pursued an identical claim all the way to a full merits hearing. Without more, the only plausible explanation for his decision to reserve this complaint to a separate claim was an entirely tactical one on the basis that if his first claim failed, as it did, he still had a second like claim up his sleeve in reserve, thereby doubling his chances of success.

62. On reaching the above factual findings I go on to find that the claimant's conduct here falls squarely within the *Henderson v Henderson* rule. This second pay claim matter should have and could have been raised and dealt with alongside the first claim. To allow it to proceed any further would be an abuse of the Tribunal process and this element of this claim is struck out on this basis.

Complaint about the emails from the Respondent's IT Department and Abuse of Process

63. This particular complaint can be simply summarised. The claimant asserts that he was harassed or victimized by the respondent's IT department. He alleges that on 24 April 2024, and only 2-hours after submitting a fit note to his employer, he received an email from the IT department telling him to run a system scan on his laptop and that he was threatened with removal of his access to the respondent's IT system. He received a further and similar email from the IT department on 17 May 2024. He complains in his second claim that he regarded these emails as threatening and he raised a concern about this with his HR point of contact, Mark Bailey, who provided him with reassurance. On his own evidence in regard to the CMPH on 16 October 2023 he was told about the possibility of amending his claim and this was reinforced on 22 February 2024 when he did so.

64. Applying the *Henderson v Henderson* rule, as refined in *The London Borough of Haringey v O'Brien*, the Tribunal should consider not just the events occurring prior to the presentation of a claim but also those occurring after that date and prior to the hearing of that claim. The claimant had ample time to amend his first claim before the full merits hearing if he wished to do so. He knew this was open to him and how to do it. It is evident from the amount of correspondence submitted to the Tribunal about his case and his complaints about the respondent that he had no hesitation, unwillingness or inability to bring matters to the attention of the Tribunal when he wanted to.

65. Again, I conclude that not amending his claim was a tactical decision by the claimant who wanted to maintain a separate set of proceedings in reserve in the event his first claim failed. This is an abuse of the Tribunal process and so I strike out this element and therefore his whole second claim on this basis.

Complaint about the emails from the Respondent's IT Department and Abuse of Process

66. As part of the bundle for this hearing the respondents provided a number of emails which form the essential basis of this particular complaint. In terms of victimisation there is no difficulty in establishing a protected act, namely the claimant's first claim to the Tribunal. But what also has to be proved is that the claimant suffered a detriment and that any detriment was because of the protected act.

67. Looking at the emails, these began on 24 April 2024 when an employee in IT Customer Relations asked the claimant to run a full scan on his machine and to send a screenshot of the result. Failure to do so would result in his account being disabled. In its response to this claim the respondent explained that the IT department sent this request to the claimant because security software alerted the IT department to a high risk of a malicious attack or virus on the claimant's laptop.

68. The claimant's email to the IT Department on 1 May 2024 indicates suspicion on his part and he asked how this particular matter had been generated. He also said that he was on sick leave and that he would run the check "next week" when he had more energy. He did then carry out a check and sent a screenshot of the same as requested on 10 May 2024. He then received a further email from IT on 17 May 2024 asking him if he had accessed any of the Sharepoint sites or files on a list provided to him.

69. Notwithstanding the fact that full disclosure has not been completed between the parties and witness statements have not been provided, the facts of this particular complaint are clear as is the evidence supporting it. The claimant's case is that he suffered a detriment at being asked to run a security check on his work laptop and this was because of his ongoing Employment Tribunal claim. I find such a claim has no reasonable prospect of success. In response to the strike out application the claimant has had the opportunity to explain how there was any sort of connection between the IT Department's request and his first claim. The respondent is a large company, and without more I find he has no prospect of establishing any sort of link between the IT Department's request that he run what appears to have been a routine security

scan and his first claim. Furthermore, I find he has no prospect of persuading a Tribunal that the request to run a scan on his computer was in any way a detriment. Therefore, I find this complaint has no prospect of success and I strike it out on this basis also.

70. I also find that this complaint has no reasonable prospect of success on grounds of harassment. The claimant has no prospect of satisfying a Tribunal that a precautionary request to run a security scan on his work computer was in any way related to his disability or that its purpose or its effect was to violate the claimant's dignity, or to create an intimidating, hostile, degrading, humiliating or offensive environment.

Overarching grounds relating to both complaints

71. I have also considered the respondent's overarching grounds. Whilst the claimant's approach to this litigation has been combative and accusatory, I do not find this has reached a level where I can strike out his claim under this part of Rule 38.

72. As for not actively pursuing his claim, I am satisfied this is the case and his claim is struck out on this basis also, although it is not the primary ground for strike. Applying the principle of proportionality and because this claim is struck out for other reasons, I will not deliver detailed reasons for this ground of strike out. All I will say is that despite consistently asserting that he lacks the necessary energy to conduct his own litigation, the claimant has devoted a considerable amount of time and effort in attempting to stall these proceedings and to complain about the respondent's solicitors who, it seems to me, have been conducting litigation on their client's behalf in a perfectly proper way and in accordance with the overriding objective. That energy could have been spent on progressing this claim and progressing his appeal in regard to his first claim. It is not clear what his long-term intentions are in regard to this particular claim, but his near-term goals have evidently been to delay and disrupt. I am satisfied that he is not actively pursuing this claim and so it must be struck out.

Judge Cowx

Date: 23 February 2026

ORDER SENT TO THE PARTIES ON

Date: 18 March 2026

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FOR THE TRIBUNAL OFFICE