



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr L Walsh

**Respondent:** Geobear Residential Ltd

**Heard at:** West Midlands

**On:** 2<sup>nd</sup> and 3<sup>rd</sup> March 2026

**Before:** Employment Judge Steward

Ms Astill

Mr Palmer

## Representation

**Claimant:** In Person (with the assistance of his brother J Walsh)

**Respondent:** Ms Kaye(Counsel)

## RESERVED JUDGMENT

The respondents application for strike out fails

The respondents application for a stay of the proceedings succeeds

## REASONS

1. This matter was listed for a 5 day final hearing starting on the 2<sup>nd</sup> March 2026. On the first day of the hearing there were two preliminary applications made by the respondents to resolve. The first was the strike out application of whole and in the alternative part of the claim and a further application that the claim should be stayed pending the outcome of an investigation of the claimant by Staffordshire Police.

**Strike out**

2. The respondents strike out claim was as follows
  - i. The whole claim be struck out (Rule 38(1)(c) and (d) ;
  - ii. The whistleblowing claim be struck out (Rule 38(1)(a));
  - iii. The unlawful deductions claim by struck out (Rule 38(1)(c) and (d).
3. A claim or response (or part) can be struck out on the following grounds:

that it is scandalous or vexatious or has no reasonable prospect of success — r.38(1)(a)

for non-compliance with any of the Tribunal Rules or with an order of the tribunal —r.38(1)©

that it has not been actively pursued —r.38(1)(d)
4. The fundamental question is whether a fair trial is still possible.
5. The matter must be approached in the light of the overriding objective (Emuemukoro v Croma Vigilant (Scotland) Ltd [2022] ICR 327).
6. The correspondence reveals that following a Preliminary Hearing attended by the claimant with his brother orders were made for [46-48]:
  - i. A Schedule of Loss – 14th May 2025.
  - ii. Disclosure of lists and all documents including those relevant to financial losses 30th June 2025;
  - iii. Agreement of the bundle – 25th July 2025
  - iv. Exchange of witness statement- 29th November 2025.
- .v. On 28th February 2026, at 15:56 and via email, the Claimant's brother purported to comply with those Orders by:
  - i. Indicating agreement to R's bundle;
  - ii. Sending 27 pages of disclosure and an Excel spreadsheet of timesheets;
  - iii. A schedule of loss
  - iv. A witness statement for the Claimant.

The respondent acknowledged that there was an attempt at material compliance, but that there were a number of deficiencies which include but are not limited to:

- i. The claimant's witness statement does not address all of the issues under consideration of the Tribunal including protected disclosures and the claimant's attempt to secure alternative work after his dismissal;
  - ii. The claimant's disclosure is incomplete, and he has not provided any documents relevant to remedy i.e. his searches for and securement of alternative employment including payslips from his new employer.
  - iii. Neither the Schedule of Loss nor the witness statement explain or set out how the Claimant's alleged loss for unpaid wages, now assessed at in excess of £18,000 (instead of £11,800 as per the CMO) has been reached.
7. In the alternative, the Tribunal is invited to strike out the automatic unfair dismissal on the grounds of whistleblowing claim in that the Claimant's witness statement leads no evidence on any of the alleged protected disclosures such that he cannot discharge the initial burden upon him of satisfying the Tribunal that he made any of the disclosures relied upon.
  8. Further in the alternative, the Tribunal is invited to strike out the claim of unlawful deduction wages. Given the procedural history and repeated opportunities to set out the calculation, the Respondent submits the Claimant should not be permitted any further opportunities. In circumstances where he bears the burden of proof, the claim should be dismissed.
  9. We remind ourselves that strike out of a claim pursuant to r.38 is a draconian measure to be exercised in rare circumstances. We take the claimant's claim at its highest and if the case turns on factual issues strike out is not likely to be appropriate.
  10. In deciding whether to strike out a party's case for non-compliance with an order under r.38(1)(c) a tribunal will have regard to the overriding objective set out in rule 3 of seeking to deal with cases fairly and justly. This requires a tribunal to consider all relevant factors, including:
    - (i) the magnitude of the non-compliance
    - (ii) whether the default was the responsibility of the party or his or her representative
    - (iii) what disruption, unfairness or prejudice has been caused
    - (iv) whether a fair hearing would still be possible, and
    - (v) whether striking out or some lesser remedy would be an appropriate response to the disobedience — see *Weir Valves and Controls (UK) Ltd v Armitage* 2004 ICR 371, EAT.

11. In the *Armitage* case, the EAT held that an employment tribunal had erred in striking out the whole of the employer's response for failure to comply with an order for simultaneous exchange of witness statements. The EAT took the view that a fair trial was still possible even though the employer had had the opportunity to tailor its witness statement in light of the witness statements served by the claimants by the due date.
12. Though we accept the chronology as set out by Counsel for the respondent and there has been non-compliance as is pleaded pursuant to rule 38(1)© we still find that a fair trial will be possible. We now have the claimants statement and further disclosure and schedule of loss. Its belated but we do have sufficient documentation from the claimant to embark on a trial as to liability. Any deficits in the claimants case will undoubtedly be tested in cross examination at any final hearing.
13. rule 38(1)(d) of the Tribunal Rules 2024 allows a tribunal to strike out either a claim or a response, or part of a claim or response, on this ground that the claim has not been actively pursued.
14. The equivalent power under the Tribunal Rules 2001 referred to the striking out of a claim for 'want of prosecution', but the substance of the power has remained the same. As a result, the case law decided under the 2001 Rules continues to be relevant to strike-outs under rule 38(1)(d). In *Evans and anor v Commissioner of Police of the Metropolis 1993 ICR 151, CA*, the Court of Appeal held that an employment tribunal's power to strike out a claim for want of prosecution must be exercised in accordance with the principles that (prior to the introduction of the Civil Procedure Rules 1998 SI 1998/3132) 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 or 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.
15. The first category is likely to include cases where the claimant has failed to adhere to an order of the tribunal. As such, it overlaps substantially with the tribunal's power under rule 38(1)(c) to strike out for non-compliance with the Tribunal Rules. The second category requires not only that there has been a delay of an inordinate and inexcusable kind, but also that the respondent can show that it will suffer some prejudice as a result.
16. We are dealing with a litigant in person. There has been delay but we don't find this has been intentional or disrespectful. We don't find the delay has been inordinate and do not find that the delay means that there is a substantial risk that a fair hearing is impossible.

17. No reasonable prospect of success — r.38(1)© conscious of the submission that the claimant's witness statement leads no evidence on any of the alleged protected disclosures such that he cannot discharge the initial burden upon him of satisfying the Tribunal that he made any of the disclosures relied upon.
18. In *Mbuisa v Cygnet Healthcare Ltd EAT 0119/18* the EAT overturned an employment tribunal's decision to strike out M's claim of automatically unfair constructive dismissal for raising health and safety concerns under S.100 ERA. The EAT noted that strike-out is a draconian step that should be taken only in exceptional cases. Such an exceptional case might arise where it is instantly demonstrable that the central facts in the claim are untrue or there is no real substance in the factual assertions being made. However, the tribunal should take the claimant's case at its highest, unless contradicted by plainly inconsistent documents. Particular caution should be exercised if a case is badly pleaded — for example, by a litigant in person,
19. The issues in the case were set out in the CMO EJ Flood at para 52 onwards. These can be determined at a final hearing. This is not a case where the central facts are instantly demonstrable as untrue or there is a total lack of substance. The claimants case will be explored in evidence.
20. In *Ezsias v North Glamorgan NHS Trust 2007 ICR 1126, CA*, the Court of Appeal held that the same or a similar approach should generally inform protected disclosure ('whistleblowing') cases, which have much in common with discrimination cases, in that they involve an investigation into why an employer took a particular step. The Court stressed that it will only be in an exceptional case that an application will be struck out as having no reasonable prospect of success when the central facts are in dispute. An example might be where the facts sought to be established by the claimant are totally and inexplicably inconsistent with the undisputed contemporaneous documentation. We do not believe this is the situation with the instant case.
21. For instance, in *Shestak v Royal College of Nursing and ors EAT 0270/08* the claimant appealed against the decision to strike out a multitude of claims arising out of the termination of her trainee nursing placement. Upholding the tribunal's decision, the EAT held that undisputed documentary evidence — in the form of emails which could not, taken at their highest, support the claimant's interpretation of events — justified a departure from the usual approach that discrimination claims should not be struck out at a preliminary stage.
22. In *Balls v Downham Market High School and College 2011 IRLR 217, EAT*, Lady Smith expanded on the guidance given in *Ezsias*, stating that where strike-out is sought or contemplated on the ground that the claim has no reasonable prospect of success, the tribunal must first consider whether, on a careful consideration of all the available material, it can properly conclude that the claim has no reasonable prospect of success. The test is not whether the claim is likely to fail; nor is it a question of

asking whether it is possible that the claim will fail. It is not a test that can be satisfied by considering what is put forward by the respondent either in the ET3 or in submissions and deciding whether their written or oral assertions regarding disputed matters are likely to be established as facts. It is a high test.

23. After the consideration of the written bundle, the issues as set out in the case management order and the recent disclosure we cannot conclude that the case has no reasonable prospect of success. The claimant's case will undoubtedly be subjected to rigorous cross examination at any final hearing and the evidence of the claimant and likewise the respondent witnesses will be important in relation to the steps taken.
24. Referring to the Court of Appeal's decision in *Ezsias* (above), the EAT in *Romanowska v Aspirations Care Ltd EAT 0015/14* held that an employment judge had erred in striking out a claim brought by a worker who alleged that she had been dismissed for making a protected disclosure rather than gross misconduct, the reason given by her employer. While the employment judge considered that the claim had no reasonable prospect of success, the EAT observed: 'Sometimes it may be obvious that, taking the facts at their highest in favour of the claimant, as they would have to be if no evidence were to be heard, the claim simply could not succeed on the legal basis on which it has been put forward. Where, however, there is a dispute of fact, then unless there are good reasons, indeed powerful ones, for supposing that the claimant's view of the facts is simply unsustainable, it is difficult to see how justice can be done between the parties without hearing the evidence in order to resolve the conflict of fact which has arisen.'

In the circumstances we do not agree to striking out the claimants claim as pleaded by the respondent.

### **Stay of Proceedings**

25. We do agree to the request of a stay in the proceedings
26. We agree with the respondent's application of the law in this area as set out in her submissions. There is a substantial degree of overlap in this case with the ongoing criminal investigation. We do accept that there is a real risk of prejudice to the claimant the respondent and the Tribunal by proceeding in this trial window or simply adjourning the case to a new trial window without any clarity on the criminal investigation and its potential impact on these proceedings and visa versa.
27. The claimant says he was dismissed for making a protected disclosure. The tribunal would need to consider the real reason for the dismissal. The respondent's reason for dismissal is the alleged behaviour of the claimant which forms the criminal investigation. It is central to the case. It is not a criminal investigation which is ancillary to the issues the tribunal need to determine. We agree the respondent will put a positive case as per para 26 1-4 of the respondents' submissions. The respondent will argue contribution namely that the claimant contributed to his dismissal by his

conduct. An assessment of the conduct will be required for culpability and dismissal as well as potential remedy.

28. In the alternative, there is likely to be prejudice to both parties in properly advancing their respective cases within the current trial window. The Respondent has orally observed the anticipated difficulties of cross-examination in the circumstances where the claimant witness statement is incredibly brief and where the common law right to privilege on the grounds of self-incrimination will likely become a live issue in the Tribunal proceedings.
29. The most recent emails received from the Police between November 2025 – February 2026, explain that a charging decision for the Claimant on allegations of Fraud by False Representation and Perverting the Course of Justice in respect of the underlying factual matters (which were the subject of the disciplinary proceedings) is awaited and due within approximately eight weeks of today.
30. The evidence also reveals that one of the Respondent ex-employees (who first made the allegation against the Claimant), has admitted the offences and awaits a charging decision. A third party also investigated by the Police (and referred to in the text messages<sup>32. 33. 34. 35.</sup> between the Claimant and his colleague which formed part of the evidence of the disciplinary) has also admitted the offences and waits a charging decision.
31. We agree to the respondents submission the final hearing be temporarily stayed and directions made for a roadmap to progress the final hearing following the impending decision on charges against the Claimant.
32. The respondent submits the effect of the temporary stay will give the Claimant time to properly consider and take advice in respect of;
- (i) the principles of continuing with the Employment Tribunal proceedings if at all and
  - (ii) (ii) the practicalities of doing so, once the status of the criminal case is properly known to him. Those decisions aforesaid, will directly affect the conduct of the cross-examination and submissions of the respondent.

We agree with this.

33. We do agree that the claimant regardless of the stay should provide a calculation of how the sums now claimed for the unlawful deduction wages from claim were calculated, the source of those calculations in terms of the

contractual material and timesheets and an explanation as to how the Claimant says the contractual material should be interpreted.

34. We agree to a stay of proceedings for 6 months given the above but that either party shall be at liberty to restore the matter for further directions when the charging decision has been made.

**Employment Judge Steward**

**03 March 2026**