



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Niculae  
**Respondent:** Bylor Services Limited  
**Heard at:** Bristol (by CVP video)      **On:** 4 March 2026  
**Before:** Employment Judge Leverton (sitting alone)

## Representation

**Claimant:** In person  
**Respondent:** Ms L Iqbal, counsel

**JUDGMENT AND REASONS** having been given orally on 4 March 2026, and written reasons having been requested by the Claimant at the hearing in accordance with Rule 60(4D) of the Employment Tribunal Procedure Rules 2024, the following judgment and written reasons are provided:

## JUDGMENT

The claims are struck out under Rule 38(1)(b) of the Employment Tribunal Procedure Rules 2024 because the manner in which the proceedings have been conducted by the Claimant has been scandalous, unreasonable or vexatious.

## REASONS

1. The Claimant was employed by the Respondent as an electrician at a civil engineering project, Hinkley Point C. He brings claims for unfair dismissal, disability discrimination, whistleblowing and wrongful dismissal (notice pay).
2. On 10 March 2025 the Respondent applied for the claims to be struck out in their entirety under Rule 38(1)(a), (b) and (e) of the Employment Tribunal Procedure Rules 2024. The Respondent relies on a series of intimidating messages sent by the Claimant to the Respondent's employees after his dismissal.

3. On 17 July 2025 there was a case management preliminary hearing before Employment Judge Midgley, who directed that a public preliminary hearing should take place on 4 March 2026 to determine the Respondent's strike-out application and various other matters. The background to the substantive claims is set out in EJ Midgley's case management order.
4. At the start of today's hearing, Ms Iqbal (counsel for the Respondent) clarified that the strike-out application was based only on Rule 38(1)(b). She argued that the manner in which the proceedings have been conducted by the Claimant has been scandalous, unreasonable or vexatious.

### **Evidence and procedure**

5. The parties were unable to agree a joint bundle of documents for the hearing. The Respondent submitted a 251-page bundle and provided witness statements from Christopher Bains, Head of Legal, and Jayne Sims, Workforce Lead. Both these witnesses are employed by Laing O'Rourke Services Limited, a company connected with the Respondent through a joint venture set up to operate Hinkley Point C.
6. The Claimant submitted his own 269-page bundle on 2 March 2026, and a replacement 447-page bundle at 2.05 am on the day of the hearing. There was no adequate explanation for the late submission of these bundles. Because of their lateness, I was unable to consider their contents in any detail, although I did skim-read them during the hearing. I explained this to the Claimant.
7. The Claimant also provided various documents containing lengthy written submissions. Seven documents (83 pages in total) were emailed to the tribunal on 2 March 2026; ten more documents (141 pages in total) were submitted at 2.05 am on the day of the hearing. In view of the Claimant's status as a litigant in person and his ADHD – which is likely to have affected his ability to prepare for the hearing and to comply with the time limits set out in EJ Midgley's case management orders – I decided to take these late submissions into account in so far as I was able to digest their contents on the day of the hearing. Ms Iqbal also reviewed them and addressed their contents orally at the hearing, so there was no undue prejudice to the Respondent. Some of the Claimant's written submissions were irrelevant to the strike-out application and are therefore not addressed in this decision – for example, his reliance on the equitable doctrine of 'clean hands'.
8. The Claimant requested reasonable adjustments at the hearing. He needed clear explanations, additional time to process information, and a short break every 45-60 minutes. He declined to make detailed oral submissions, relying instead on the written submissions he had prepared in advance, and he said that he was content to proceed on that basis. His written submissions were very detailed and so I did not consider him to be disadvantaged by that approach. I suggested that he could also make use of the chat box in the CVP hearing room if he so wished.

## Legal framework

9. When considering whether to strike out a claim, an employment tribunal must apply a two-stage test – see **HM Prison Service v Dolby** [2003] IRLR 694, EAT, at para 15, and **Hasan v Tesco Stores Ltd** EAT 0098/16. First, it must consider whether any of the grounds set out in Rule 38(1)(a)–(e) of the Tribunal Rules 2024 have been established. Secondly, having identified any established grounds, it must decide whether to exercise its discretion to order strike-out. The tribunal should have regard to the overriding objective of dealing with cases fairly and justly, set out in Rule 3 of the Tribunal Rules 2024. In considering whether the claim should be struck out, it must consider whether a fair trial is still possible – **De Keyser Ltd v Wilson** [2001] IRLR 324, EAT.
10. Rule 38(1)(b) of the Tribunal Rules 2024 provides that a claim, response or reply to an employer’s contract claim (or part) may be struck out if ‘the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent... has been scandalous, unreasonable or vexatious’. The word ‘scandalous’ in this context means irrelevant and abusive of the other side. It is not to be given its colloquial meaning of signifying something that is ‘shocking’ – **Bennett v Southwark London Borough Council** [2002] ICR 881, CA.
11. Witness intimidation may amount to ‘scandalous, unreasonable or vexatious’ conduct in that it tends to subvert the process of justice and has the potential to impair the fairness of the trial. For example, in **Force One Utilities Ltd v Hatfield** [2009] IRLR 45, EAT, an employment tribunal was justified in striking out an employer’s defence to a claim of unfair dismissal in circumstances where a witness for the employer had threatened the claimant with physical harm, telling him that he should be careful how he slept at night, and had blocked his attempt to leave the tribunal car park. The conduct of the witness had made a fair trial of the issues impossible. The EAT commented that where a tribunal has found intimidation of this kind, it would be ‘very exceptional’ for that finding to be held to be perverse. However, witness intimidation does not automatically mean that a fair trial is no longer possible; the tribunal must still direct its mind to that question – **A v B** EAT 0042/19.
12. In **Bolch v Chipman** [2004] IRLR 140 (approved by the Court of Appeal in **James v Blockbuster Entertainment Ltd** [2006] IRLR 630, at para 5) the EAT held that, in ordinary circumstances, the correct approach to the then equivalent of Rule 38(1)(b) was to (a) decide whether a party’s conduct of the proceedings had been scandalous, unreasonable or vexatious; (b) if so, decide whether a fair trial was still possible; (c) even if a fair trial was not possible, consider the appropriate remedy, which must be proportionate; and (d) if a striking-out order was proportionate, consider the consequences of that order.
13. In **Bailey v Aviva Employment Services Ltd** [2025] IRLR 831, EAT, His Honour Judge Auerbach stated at para 45 that *‘in general, if the tribunal has found in the given case that the conduct of a party crosses the threshold of being scandalous, vexatious or otherwise unreasonable, then it must go on to consider whether, nevertheless, a fair trial, is, or may still be, possible. As part of that, it must also consider what alternative ways, short of a strike-out, there*

*may be of reasonably managing, mitigating or addressing the conduct of the party concerned, or the impact which it threatens to have on the possibility of there being a fair trial, so as to avoid it having that effect.’* HHJ Auerbach added at para 47 that *‘in cases where the strike-out threshold has been crossed on account of a party’s conduct of the litigation, the question of whether a fair trial is still possible, and the question of whether there is an alternative proportionate measure short of strike-out that the tribunal should adopt, often go hand in hand and are intertwined.’*

14. In **Leeks v University College London Hospitals NHS Foundation Trust** [2025] ICR 87 the EAT commented that where a party has conducted proceedings in a manner that has been scandalous, unreasonable or vexatious, that may be relevant to the possibility of a fair trial because, if there has been repeated default in the past, it is common for it to be repeated in the future. Strike-out under Rule 38(1)(b)–(d) generally only requires that there is a ‘significant risk’ that a fair trial could not take place.

### **Discussion and conclusions**

15. In support of its strike-out application, the Respondent relies on a series of emails and messages sent by the Claimant to various individuals within the Respondent’s organisation during the period 6–9 March 2025. Many of these individuals are key witnesses in relation to the Claimant’s tribunal complaints. They include Stuart Griffiths, who heard the Claimant’s appeal; Osian Ap Rhidian, the Claimant’s supervisor; James McDonnell, the Claimant’s manager; and Jayne Sims, Workforce Lead, who was involved with the Claimant’s performance improvement plan. These individuals are specifically named at several points in EJ Midgley’s list of issues.
16. On 6 March 2025, the Claimant emailed the employment tribunal attaching various documents in connection with his claim. He copied in 23 other organisations or individuals, including many employees of the Respondent and/or the companies involved in the joint venture that operated Hinkley Point C. He signed off with a series of proverbs and quotations, many of which were of a hostile or critical nature, and finally with the phrase, ‘You cunts – Kind reminder’.
17. On 7 March 2025, the Claimant sent the following email to nine colleagues (James McDonnell, Robert Greene, Peris Ap Rhidian, Neil Lott, Stuart Griffiths, Simon Dumbleton, Connor Quinn, John Eddleston and Jayne Sims): ‘You people know where my family live. At this point, you did your very best to remove my ability to provide shelter and food for me and my family. Time to start using your brains and calculate your actions, there’s no mercy from me anymore. Stay away from me and my family. Reply with “Yes, I swear to stay away from you and your family” for confirmation. If you don’t reply, I’ll have to wait for you, cunts.’
18. Later that day, a series of messages from the Claimant was sent or forwarded to Mr McDonnell, including the following: ‘You incompetent cunt, if you and your brother try something again, you better use your brain, I have children in my house, no mercy for none of you puppets.’

19. In a series of WhatsApp messages sent to Mr McDonnell on 9 March 2025, the Claimant stated: 'You and your mates haven't replied to my email. You want to come near me or my family. I'm ready for you... You incompetent envious little cunt. It's my family, you little shit... You'll never have the chance ever again to have any power of this kind to do it to no-one ever again, you short little shit... You cunts are planning something... You idiots think about it, stay away.'
20. The Claimant also sent a series of WhatsApp messages to Osian Ap Rhidian on 9 March: 'Make you and your other cunts think twice before coming close to me or my house... I'll stop your breath before you do any more damage... You cunts... Do you understand, you fucking virgin?... All you incompetent puppets stay away... You're too weak to be safe or helping for no one... I'll never let you win... Cunts... I never give up.' The Claimant sent further WhatsApp messages to Simon Dumbleton on that date, stating (among other things): 'None of you cunts are replying, don't do something stupid, I'm ready for all of you cunts... You got it?'
21. Later that day, the Claimant emailed the nine colleagues who had been the recipients of his earlier messages as follows: 'I apologise if my previous emails appeared overly emotional. These communications were driven by extreme stress due to my difficult financial situation and emotional distress. Moving forward, all my communications will remain strictly professional and related directly to legal proceedings. I expect the same professional conduct in return.'
22. The Respondent took steps to deal with the threat posed by the Claimant. It reported the abusive messages to the police, who spoke directly to Osian Ap Rhidian about the Claimant's threat to kill him. The Respondent also rerouted the Claimant's emails directly to its legal team so as to prevent further harassment of individual employees.
23. The conduct described above took place over a period of four days. It does not appear to have been repeated in the 12 months since the messages were sent (although it should be noted that members of Mr McDonnell's team have blocked the Claimant's phone number, so he is no longer able to contact them directly). EJ Midgley's case management order records that the Claimant became angry and frustrated when his amendment application was refused at the case management hearing in July 2025. Nevertheless, it is not clear that the Claimant's conduct crossed a line on that occasion.
24. The messages sent by the Claimant to his colleagues in March 2025 contained foul language and threatening content. There were implicit threats of violence ('I'll have to wait for you... no mercy for none of you puppets... I'm ready for you') and a threat to kill ('I'll stop your breath before you do any more damage'). I accept that these threats were such as to place potential witnesses in genuine fear of the Claimant and the steps he might take by way of retaliation if they gave evidence in connection with the tribunal claim. I do not accept the Claimant's assertion that his messages were simply a defensive plea for his former colleagues to stay away from his home and family; in my view, they amounted to a threat of violence if anyone spoke out against him or otherwise damaged his interests. This was not an isolated incident, but a series of messages sent to numerous individuals over a period of several days. I have

no hesitation in concluding that the Claimant's conduct crossed a threshold and that he has conducted the proceedings in a scandalous, unreasonable or vexatious manner.

25. The next question is whether I should exercise my discretion to order strike-out. I bear in mind that strike-out is a severe sanction that will deprive the Claimant of the possibility of airing his complaints before an employment tribunal. It may be that there is merit in his claims; it will all turn on the evidence, and if his claims are struck out, the evidence will never be heard. I must consider whether a fair hearing is still possible and whether the sanction of strike-out would be proportionate.
26. The impact of the Claimant's conduct on the witnesses is, I accept, that they are scared to give evidence. In his witness statement, Mr Bains states that he is concerned for members of Mr McDonnell's team, who are provided with accommodation by the Respondent because of the remote location of the site where they work. The Claimant is aware of the location of their workplace and living accommodation, their start and finish times, and the routes of the park-and-ride buses they take to work. Peris Ap Rhidian, Osian Ap Rhidian and Simon Dumbleton have expressed fear that the Claimant will target them during their commute. Mr Bains expresses his 'sincere belief' that the Claimant would act on his threats if he came into face-to-face contact with his former colleagues. On 16 September 2025, during a Teams call, Mr McDonnell told Mr Bains that he was not comfortable providing a statement for this preliminary hearing owing to his belief that the Claimant might threaten him and his young family; Mr McDonnell, as the Claimant's manager, is a key witness in these proceedings. Mr Bains concludes his statement by saying that he is concerned that he and others would be at risk if they were to attend a hearing, and that witnesses would fear for their safety even if the hearing were conducted remotely.
27. Mr Bains' concerns are echoed in the witness statement of Ms Sims. Following receipt of the email from the Claimant on 7 March 2025, Ms Sims felt genuine concern for the safety of herself and her colleagues. She believed the Claimant would act on his threats and might attend the site or find out where his colleagues lived and lie in wait for them. Ms Sims concludes by stating that she is afraid to give evidence at a final hearing as a result of the Claimant's threatening and intimidating behaviour. She fears for her safety and she is concerned about a possible escalation of the Claimant's conduct.
28. In the circumstances of this case, I consider that it was not appropriate for me to hear oral evidence from these witnesses; EJ Midgley recorded in his case management order that they were not required to attend the strike-out hearing. I am satisfied that the fears expressed in their statements are genuinely held and are reasonable in the circumstances. The Claimant's apology and the fact that there has been no repetition of his conduct over the past 12 months must be seen in context: the Claimant knows that any further threats would be likely to weigh in favour of the Respondent's strike-out application. I consider it possible that the threatening conduct would resume against the stressful backdrop of a substantive hearing, or subsequently if the claims were unsuccessful.

29. An important consideration is whether measures could be taken to mitigate the impact of the Claimant's conduct and ensure a fair hearing. For example, the witnesses could be permitted to give evidence behind a screen or by video, and the tribunal could tightly manage the Claimant's cross-examination of them. I do not think this would address the problem: today's hearing took place online but the witnesses were still afraid to attend. I have considered the possibility of the tribunal issuing further warnings to the Claimant or making a deposit order or a costs order against him. I do not think these measures would be effective against the perceived threat of physical violence and the deterrent effect on the witnesses, who fear repercussions from the Claimant if they give evidence, especially if the claims are unsuccessful. The damage has already been done; they are afraid for their own safety and that of their families. The Claimant knows where the members of Mr McDonnell's team live and work. He now lives 55 miles away, but it is reasonable to suppose that he could travel to their workplace or homes if he chose to do so.
30. I also bear in mind that the Respondent has a duty to protect the safety and wellbeing of its staff. Requiring them to give evidence at a tribunal hearing would be problematic and might amount to an unreasonable management instruction. There is a possibility that it would give rise to a breach of trust and confidence. This puts the Respondent in an untenable position: it cannot legitimately require these witnesses to attend but it will be unable to defend the claims in their absence. For the tribunal to put the Respondent in this position would be contrary to the overriding objective, placing the parties on an unequal footing. The prejudice to the Respondent is, I consider, irremediable.
31. I have not discounted the Claimant's difficult circumstances at the time he issued the threats. He had lost his job; he was likely to lose his home; and he was unable to secure other employment. He blamed the Respondent for his circumstances. It was undoubtedly a period of extreme stress and anxiety for him. There are references in the Claimant's response to the strike-out application to a letter from a wellbeing advisor in July 2025 and a psychiatric referral in October 2025, but was no direct medical evidence as to the Claimant's mental state at the time when he sent the threatening messages. However, he has an ADHD diagnosis and there is an indication in his response to the strike-out application that he may also have PTSD. I am prepared to accept that these matters may have affected his conduct.
32. The appendix to the Equal Treatment Bench Book lists some of the possible symptoms of ADHD. They include mood swings, irritability, a quick temper, and an inability to deal with stress. I might have been prepared to view an intemperate outburst or foul language in this light and to treat it more leniently, but threats of physical violence are a different matter. I was not referred to any medical evidence to suggest that the Claimant's messages were a direct result of his ADHD or that he was suffering an acute mental health episode at the time, as he alleges. But even if there had been such evidence, in my view this does not detract from the content of the messages, which reasonably caused the Respondent's witnesses to fear for their physical safety such that a fair trial is no longer possible. The critical factor is the impact that the threats have had

on the Respondent's witnesses, and therefore on the Respondent's ability to defend these claims.

33. In all the circumstances, I consider that a fair trial is not possible. In the exercise of my discretion, I have concluded that the appropriate and proportionate remedy is a striking-out order. The claims are struck out under Rule 38(1)(b) and will not proceed to a full hearing. This is a draconian step, but it is a consequence brought upon the Claimant by his own conduct. Given the outcome of the strike-out application, it is not necessary for me to address the other matters raised by the parties. Among other things, the Claimant applied to strike out the Respondent's response on the ground that it had no reasonable prospect of success. I would not have granted his application: the claims are highly fact-dependent and if they had proceeded to a final hearing everything would have turned on the evidence.

Approved by:  
**Employment Judge Leverton**

31 March 2026

JUDGMENT & REASONS SENT TO THE PARTIES ON  
01 April 2026

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