



EMPLOYMENT TRIBUNALS

Claimant: Ms A Kozłowska

Respondent: Zotefoams PLC

Heard at: London South Employment Tribunal by CVP

On: 14 and 15 April 2026

Before: Employment Judge T Perry

Representation

Claimant: in person

Respondent: Mr Sutton KC (Of Counsel)

JUDGMENT

1. The applications to strike out the Claimant's claims under rules 38(1)(a) and (b) are rejected.
2. The application to strike out the Respondent's defence under rule 38(1)(b) is rejected.
3. The Tribunal declines to award a deposit under rule 39.

REASONS

Introduction

1. The Tribunal was provided with the following documents:
 - a. A bundle from the Respondent running to 181 pages;
 - b. A supplementary bundle from the Respondent running to 16 pages;
 - c. A cast list and chronology from the Respondent;
 - d. A bundle from the Claimant running to 126 pages; and
 - e. A bundle of pleadings and authorities from the Claimant running to 441 pages.
2. The bundle from the Claimant included witness statements from the Claimant and from Kristine Turlo.

3. The Respondent provided witness statements from Ronan Cox, Clare Farmer and Alison Fautley.
4. EJ Evans listed this hearing at a Preliminary Hearing on 26 November 2025. The case management orders of that hearing recorded at paragraph 2 that it was at my discretion whether I would hear live evidence. At the start of the hearing, I expressed my provisional view that I did not intend to hear live evidence but would have regard to the written witness statements. Mr Sutton KC suggested that live evidence may be required as to the question of the conduct of proceedings but not as to the merits of the Claimant's claim. The Claimant, after a reading break, confirmed that her view was that the applications could be determined based on submissions alone. I accept this was in the context of my openly expressed provisional view that cross examination was unnecessary. On that basis, I determined to proceed directly to submissions. It is right to note that the Claimant's written submissions contained a significant amount of what could be said to be evidence.
5. The Tribunal had the benefit of detailed written submissions from the Claimant (contained in her pleadings and authorities bundle) and heard detailed oral submissions from both sides. The Tribunal sought and received clarification from the parties on one document by email after closing submissions.
6. The Claimant's submissions included a section on a document accidentally disclosed by the Respondent in separate proceedings. There is an apparent dispute about the admissibility of this document in these proceedings. The parties were happy for me to look at that document and the section of the Claimant's submissions relating to it. In the end, I found it of no assistance as to the determination of the applications before me. I decline to make any further comment on the admissibility of this document in these proceedings.

The Law

7. Rule 38 reads, in so far as is relevant:

"Rule 38

(1) The Tribunal may ... 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 prospects of success;

b) that 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;”

8. The power to strike out is discretionary. If a ground justifying strike out is made out, the Tribunal must then consider whether to exercise its discretion to strike out. This is a two-stage process.

Reasonable prospects of success

9. As to strike out due to prospects of success, HHJ Tayler’s decision in **Wangtian Xie v E’Quipe Japan Ltd** [2024] EAT 176 is a recent reminder that: striking out a claim is a draconian step only to be taken in clear cut cases; there is public interest in discrimination and whistleblowing cases being heard on the merits albeit there is no absolute prohibition on strike out; a party’s case should generally be taken at its highest when considering strike out on merits; strike out is rarely appropriate when there are core disputed facts; and care should be taken when striking out a claim brought by a litigant in person.

10. A party’s case needs to be clearly understood before it can be struck out.

Conduct of litigation – scandalous, vexatious, unreasonable

11. As to the conduct of litigation, Unreasonable conduct has its normal meaning. For a tribunal to strike out for unreasonable conduct, it must be satisfied either that the conduct involved deliberate and persistent disregard of required procedural steps or has made a fair trial impossible; and in either case, the striking out must be a proportionate response (**Blockbuster Entertainment Ltd v James** 2006 IRLR 630, CA).
12. Scandalous means conduct that is irrelevant and abusive to the other side rather than ‘shocking’ (**Bennett v Southwark London Borough Council** [2002] ICR 881, CA).
13. In **Attorney General v Barker** [2000] 1 FLR 759, QBD (Div Ct), Lord Chief Justice Bingham described ‘vexatious’ as a ‘familiar term in legal parlance’. He said that the hallmark of a vexatious proceeding is that it has ‘little or no basis in law (or at least no discernible basis); that whatever the intention of the proceeding may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in

a way which is significantly different from the ordinary and proper use of the court process’.

Threats and intimidation

14. In **A v B** UKEATS/0042/19/SS Lord Summers said at [45]

“Rule 37 [now 38] does not state that intimidation of a witness is a ground for strike out. But it is an obvious example of “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.”

15. In **Force One Utilities Ltd v Hatfield** [2009] IRLR 45, EAT, a tribunal struck out the respondent's response and debarred them from taking any further part in the proceedings, either as to liability or remedy, on the ground that a fair trial was no longer possible. The conduct in question consisted of threats made by a director of an associated company of the respondents, who had conducted the proceedings on their behalf, to the claimant as they left the tribunal building following a hearing which had been adjourned to enable the claimant to obtain legal advice.

16. Elias P in **Hatfield** at paragraphs [36-37] states: *“We do not accept that a balancing exercise [of prejudice to each party] is the correct metaphor in a case of this kind. The intimidatory conduct of one party is specifically designed to put the other in fear of the consequences of continuing with the action. Where a tribunal concludes that the intimidated party will be unable to manage that fear and is likely to tailor the evidence to fit with the other party's case, then it seems to us that the only proportional response is to disallow the intimidating party from being allowed to take further part in the proceedings, at least with respect to liability. It is a draconian step to take and it plainly does affect the ability of the intimidating party to defend the case, but that is a consequence which that party has brought upon itself. In our judgment, once a tribunal finds that a party is sufficiently intimidated as to affect his or her ability to give evidence without fear of consequences, the only proportionate response can be to bar the other party from participating in the trial.”*

17. In the context of threats by one party against another, Burton J in the EAT in **Bolch v Chipman** [2004] IRLR 140, EAT stated (at [55](1)):

“We are by no means saying that there can be no finding that proceedings have been conducted in the relevantly objectionable ways, simply because the conduct that occurred is proven to have taken place outside the curtilage

of the Tribunal. It is not necessary that such objectionable conduct should either amount to the sending of legal documents, or the receipt of legal documents, or their non-receipt, or behaviour in the waiting room, or behaviour in the court room.

There can no doubt be a finding in relation to conduct outside the court room and outside the ambit of legal correspondence which could be found to be a method of conducting the proceedings. For example, it may well be, on appropriate facts, that a Tribunal might find that if there were a threat that unless proceedings were withdrawn some course or other could be taken, that that would amount to a scandalous method of conducting those proceedings...

'If there is to be a finding in respect of [rule 38(1)(b)] ... there must be a finding with appropriate reasons, that the conduct in question was conduct of the proceedings and, in the circumstances and context, amounted to scandalous, unreasonable or vexatious conduct.'

18. Burton J went on at [55](2)) to acknowledge that even where, faced with a strike out, the miscreant party professes contrition and promises good behaviour the tribunal may conclude that the 'lingering effect' of the intimidation continues to make a fair trial impossible.

Fair trial still possible

19. In considering whether a claim should be struck out on the grounds of scandalous, unreasonable or vexatious conduct, a tribunal must consider whether a fair trial is still possible (**De Keyser Ltd v Wilson** [2001] IRLR 324, EAT).
20. The EAT set out the steps that a tribunal must ordinarily take when determining whether to make a strike-out order in **Bolch**. The first question is whether there has been scandalous, unreasonable or vexatious conduct of the proceedings which may result in a strike out. If so, the second question is whether the conduct constitutes deliberate and persistent disregard of the required procedural steps or (if not) whether the conduct in question is such that a fair trial is no longer possible. The third stage is whether strike out would be a proportionate response to the conduct in question. The fourth is, if the claim or response is struck out, what further consequences might follow, including consideration of whether a respondent debarred from participation at the liability stage should nevertheless be permitted to appear at the remedy stage.

21. In relation to r 38(1)(b), there is no requirement to conclude that a fair trial is not possible in absolute terms; the question is whether there is a 'significant risk' that a fair trial is no longer possible **Leeks v University College Hospitals NHS Foundation Trust** [2024] IRLR 866, EAT.

22. In **Arrow Nominees Inc v Blackledge** [2000] 2 BCLC 167 Chadwick LJ stated at [54]:

"But where a litigant's conduct puts the fairness of the trial in jeopardy, where it is such that any judgment in favour of the litigant would have to be regarded as unsafe, or where it amounts to such an abuse of the process of the court as to render further proceedings unsatisfactory and to prevent the court from doing justice, the court is entitled – indeed, I would hold bound – to refuse to allow that litigant to take further part in the proceedings and (where appropriate) to determine the proceedings against him. The reason, as it seems to me, is that it is no part of the court's function to proceed to trial if to do so would give rise to a substantial risk of injustice. The function of the court is to do justice between the parties; not to allow its process to be used as a means of achieving injustice. A litigant who has demonstrated that he is determined to pursue proceedings with the object of preventing a fair trial has forfeited his right to take part in a trial. His object is inimical to the process which he purports to invoke.'

Proportionality of strike out

23. In **Bennett Sedley, LJ** emphasised that if a tribunal was asked to strike out a claim it must seek to determine whether such a response was proportionate to the wrong done.

"...proportionality must be borne carefully in mind in deciding these applications, for it is not every instance of misuse of the judicial process, albeit it properly falls within the description scandalous, frivolous or vexatious, which will be sufficient to justify the premature termination of a claim or of the defence to it."

24. The question of the proportionality of strike out arose in **PP v GG Ltd** [2025] EAT 65 (13 May 2025, unreported). This was a case struck out at Tribunal due to the Claimant making allegations included that the respondent had concealed and destroyed evidence, harassed the claimant in correspondence, that their solicitor had induced a nervous breakdown, that the respondent had breached her personal data rights and hacked her social media accounts and influenced the eviction from her home. The

tribunal held that the respondent, and especially their legal representatives, should not have to continue to defend a claim where extreme unfounded allegations had been made. Allowing the appeal, the EAT held that such allegations are not uncommon, and litigators have to have broad shoulders [69].

25. HHJ Stout observed at [70]: "A strike-out application that relies on documents that are found on the balance of probabilities to be forged may, depending on the circumstances, provide grounds for a "reverse strike out" on the basis that a party's willingness to forge documents threatens the fairness of a trial. Repeated unwarranted referrals to a professional regulator (or threats of the same) may put a case into strike-out territory, as may allegations framed in abusive language, especially if repeated after warning(s). Likewise, a failure to accept a determination of the Employment Tribunal that a particular allegation lacks merit may mean that a fair trial really does become impossible. In most cases, though, this will not be because of the nature of the allegations themselves, but because the repetition of the conduct in the face of orders/warnings demonstrates a disregard for the Rules or the authority of the Tribunal of the sort that makes a fair trial impossible and strike out a proportionate response."

Deposit order

26. The power to order a deposit is contained in rule 39.
27. When determining whether to make a deposit order, a tribunal is not restricted to a consideration of purely legal issues but is entitled to have regard to the likelihood of the party being able to establish the facts essential to his case, and, in doing so, to reach a provisional view as to the credibility of the assertions being put forward **Van Rensburg v Royal Borough of Kingston-upon-Thames** UKEAT/0095/07 although the tribunal 'must have a proper basis for doubting the likelihood of the party being able to establish the facts essential to the claim or response' (paragraph 27).

The facts

28. I do not comment on all the facts in the case. Indeed, it would seem quite unsatisfactory for me to make really any findings that might bind any subsequent tribunal hearing regarding the facts of the underlying claim.
29. I would note that the issues in the underlying claim are as set out in note of the Preliminary Hearing before EJ Evans. The claims are for constructive

automatic unfair dismissal (s103A) and whistleblowing detriment with the detriments said to be also the conduct amounting to breaches of the implied term of trust and confidence. These breaches/detriments are at 2.1.1.1-2.1.1.4 in the list of issues and include, relevantly “Fabricate allegations against her by orchestrating/co-ordinating the raising of baseless or fictional grievances against her by Ms Emilia Coman, Cheryl Reid, Kamila Kopanska?”. Certain of the claimant’s alleged Public Interest Disclosures are accepted as qualifying and others are disputed.

30. At that same hearing, EJ Evans rejected an application to amend that would have expanded the claim to include the actions of Ms Farmer, post-dating the claimant’s employment ending.
31. I think I am on safer ground making findings of fact in respect of the period after the end of the Claimant’s employment. I am conscious that I have been provided with only a selection of correspondence between the parties. What follows is therefore not able to set out the full chronology and records only what seem the most salient points to determine the applications.
32. The claim form was issued on 5 December 2024.
33. On 8 January 2025 the Claimant mentioned press interest in the case in message to the Respondent’s chair Lynn Drummond, suggesting that Ms Drummond might be directly implicated in the case.
34. On 9 January 2025 the Claimant emailed the solicitor with day to day conduct of the matter at Osborne Clark, Emma Wills Davies, but marked for the attention of Clare Famer, alleging “serious concerns regarding ongoing witness intimidation within your organization, particularly involving Clare Farmer, which may constitute a criminal offense under UK law.” This email went on to refer to s51 Criminal Justice and Public Order Act 1994 and potential perverting the course of justice and went on to say “Please treat this as a formal warning and ensure that all employees, including senior management, are reminded of their obligations under the law and the importance of preserving the fairness of the Tribunal process.”
35. On 17 January 2025 the Claimant in an email to Ms Davies, purported to provide “advice regarding the situation you are navigating” suggesting either that Ms Davies was either receiving inaccurate instructions or that there was misrepresentation in legal submissions and referring to exposing Ms Davies to scrutiny (including potential regulatory scrutiny) and reputational harm.
36. On 20 February 2025 the Claimant emailed the Respondent’s solicitors

referring to an SRA investigation and under a heading of “Kamila K – Officially unavailable” said “Kamila K will not testify as she will no longer be at Zotefoams by the time of the final hearing. Ongoing defamation proceedings in Poland will ensure that she fully understands the legal consequences of leaking false statements. Insert from a Polish court bundle below.” It is notable that even at this early stage the Claimant was referring to criminal prosecution under a heading about the availability of Ms Kopanska as a witness. The Claimant goes on to refer to Emilia Coman as being unlikely to give evidence due to her grievances about the Respondent relating to failure to secure “psychological safety”.

37. On 20 February 2025 the Claimant contacted Gary McGrath, the Respondent’s Chief Finance Officer, via LinkedIn suggesting he seek an independent legal opinion which, the Claimant asserted, would show that defending the case was futile and saying that Osbourne Clarke were exposing the Respondent to serious risks.
38. The Claimant made repeated and lengthy applications to the Tribunal which swelled the Tribunal file to over 1000 pages and led to repeated correspondence from Judges advising her against this.
39. On 17 April 2025, an indictment in private criminal proceedings brought by the Claimant was issued in Poland against Kamila Kopanska. This included a request for disclosure of documents relating to Ms Reid and Ms Coman in addition to Ms Kopanska.
40. On the same day, the Claimant made a report to Osbourne Clarke’s compliance team about the substance of legal arguments and procedural tactics employed in defending the claim and referring to a report to the SRA.
41. On 8 May 2025, the Claimant emailed Michael Richards, the Respondent’s Head of IT, with Osbourne Clarke in copy, alleging negligence by Osbourne Clarke and suggesting the Respondent seek recovery of legal fees for deficient work.
42. On 9 May 2025, the Claimant emailed Emma Wills Davies suggesting potential defamation action against her personally. “Let this serve as a formal warning: Any further false or defamatory representations about my conduct — whether made in legal submissions, internal correspondence, or otherwise — may give rise to a separate legal claim, including a potential defamation action against you personally.” I note at this point that the Claimant is here explicitly linking Ms Davies conduct of the litigation with a

threat to issue defamation proceedings. The Claimant clearly links the two processes.

43. On 2 July 2025, the Claimant messaged Kamila Kopanska. The message is significant and should be quoted in full. I understand the translation below was made by Google Translate based on the original Polish message.

“Hi Kamila

I was given your number by someone who requested anonymity but who believes you may have been drawn into a situation that got out of hand.

I am writing to you because, as you may know, there is a defamation case pending in Poland. Since this is a criminal case, the notice was sent to your old work address, so this is a risk that it has not reached you yet.

If you were forced to write a grievance, or if the document was written by someone else – for example, Hannah – then now that Hannah is no longer working and you are suffering the consequences of her decisions, it may be worth considering whether it is time to tell the truth.

I am writing to you in good faith. Although the consequences of what happened have been serious for me, I believe there is still room to end this matter without years of expensive legal proceedings. What you do with this message is entirely up to you.

Regards Agata”

44. The format of this message is striking. It starts with mention of the defamation proceedings. It then includes a hypothetical scenario where Ms Kopanska did not write her own grievance. The Claimant has repeatedly advanced this in correspondence as something she can prove via linguistic analysis. This scenario is linked to a recommendation to tell the truth. Then the message ends with mention of avoiding years of expensive legal proceedings, which I consider can only be a reference to the defamation claim (the Tribunal claim not being in any way expensive for Ms Kopanska – unlike the criminal prosecution). The subtext is inescapable, that giving the evidence contained in the message may avoid the defamation proceedings.

45. On 13 July 2025, the Claimant emailed Osbourne Clarke repeating that Emilia Coman and Kamila Kopanska would not give evidence. In relation to Kamila Kopanska she says “Kamila Kopańska has already indicated that she does not stand by the document. She will not testify, and her grievance is now subject to criminal prosecution for defamation in Poland. She will be

compelled to answer for her actions before a criminal court under oath.” This email contained a reference to Cheryl Reid, essentially dismissing her as a witness of no real import.

46. On 19 July 2025, the Claimant writes to the SRA to escalate her complaint about Osbourne Clarke and criticising the SRA’s “inaction and deflection”. The criticism detailed in this letter is largely focused on the content of pleadings but goes on to draw wider conclusions alleging knowingly misleading of a tribunal and procedural abuse of a litigant in person.
47. On 21 July 2025, the Claimant sent a pre-action letter to Cheryl Reid alleging defamation in relation to Ms Reid’s grievance and referring to seeking damages and costs in the High Court. The letter contains the line “Nothing in this letter prevents you from providing truthful evidence in the ongoing Employment Tribunal proceedings, where you are listed as a witness.” However, it is hard to ignore that the letter is being produced shortly after the Claimant has started to refer to Ms Reid in correspondence as a potential witness (such as in the email on 13 July 2025). By November 2025, Ms Reid had felt the need to instruct solicitors in relation to this threatened claim who were corresponding with the Claimant on her behalf.
48. On 11 August 2025, the Claimant circulated to Osbourne Clarke the text of a press facts sheet relating to the claim. I do not know if this was circulated or the case picked up by the press.
49. Witness statements for Cheryl Reid, Emilia Coman and Kamila Kopanska were finalised and signed in August 2025 but not exchanged. Also in August 2025, Ms Kopanska was described by her psychologist as suffering the symptoms of depression, PTSD and burnout. She had been receiving treatment from this individual since September 2024.
50. On 24 November 2025, the Polish court discontinued the Respondent’s private criminal prosecution. This appears to have happened before any final hearing. The Claimant was required to bear the costs of the proceedings, which was said to be a consequence of the discontinuation.
51. On 26 November 2025, there was a Preliminary Hearing before EJ Evans at which the Tribunal confirmed the issues in the case, relisted the full merits hearing and converted this hearing (previously the listing for the full merits hearing) to the current listing. Disclosure of witness statements was scheduled for 14 May 2026.
52. On 28 January 2026, a Polish appeal court confirmed the dismissal of the

private prosecution and to award costs of the appeal against the Claimant.

53. On 29 January 2026, Clare Farmer (apparently via solicitors) contacted Surrey police regarding the Claimant.

54. On 24 February 2026 the Claimant was arrested in relation to stalking and harassment but released without charge.

55. On 22 March 2026, Surrey Police emailed the Claimant to confirm that the criminal offence of harassment had not been evidenced /made out.

56. On 2 April 2026 Alison Fautley, having been asked to do so by Osbourne Clarke, emailed Emilia Coman, Cheryl Reid and Kamila Kopanska asking them whether they would be prepared to attend the hearing scheduled in August to give evidence.

57. That same day Kamila Kopanska replied:

“My legal criminal case in Poland that Agata has given me has now officially concluded in my favour after a long and mentally difficult process that lasted over 6 months. This situation which already takes for me a year and a half since it all started, caused me a significant amount of stress and had a serious personal and professional impact on me. With the end of the proceedings in January 26, I finally felt that this chapter of my life was closed. For this reason, I have decided that I do not want to be involved in any further proceedings or disputes related to this matter. I am very concerned that my involvement could reopen the conflict and potentially expose me again to personal attacks or retaliation, which I would like to avoid. I am very grateful for the support I received from Clare during my case and I will support her if she needs me and she knows it. I appreciate her help and professionalism, she was the only one checking up on me last 6 months.”

58. On 6 April 2026, Ms Coman replied asking to understand more about what this would entail. She was referred to Osbourne Clarke for further information and replied further on 8 April 2026 to say:

“Good afternoon,

After careful thought, I would prefer not to act as a witness in these proceedings.

I want to be open about why. I am genuinely frightened of Agata and worried about the consequences for me if I were to be involved. I’m particularly concerned about her reaction and the impact this could have on my wellbeing. I’ve mentioned before that she was trying to find out where I live,

and I'm very anxious about triggering any further or unwanted attention from her.

I also understand that acting as a witness would mean Agata could question me directly, and that's not something I feel able or comfortable to do.

I've already shared everything I had to say about my experience of working with her at the time, including why I raised a grievance, and I don't feel able to go back to or relive that experience again.

I hope you can understand my position.

Emilia"

59. Also on 8 April 2026, Ms Reid replied:

"Hi Alison, upon reflection I am not willing to act as a witness for the business. My primary reason for this is that Agata came after me personally when I raised concerns about her conduct. I sought my own legal representation to deal with this situation and this was a very stressful and trying time for myself. My legal representative has shut down the situation, and I do not want to dredge up those feelings again. I need to protect my own health and mental wellbeing, and I feel this will be compromised if I participate."

Conclusions

Merits

Isolation

60. The Respondent's application in this regard is very much focussed on the constructive unfair dismissal claim and specifically the alleged that the Claimant changing her position from on 8 November 2024 saying "I recognise you have asked me to refrain from discussing this matters with the team, and to refrain from speaking to anyone within HR and I intend to fully honour this request" to on 11 November 2024 saying in the first of her resignation letters "One of the most significant concerns was the instruction from Lydia to restrict my communication with members of the HR team who were unrelated to the grievances" and in the second resignation letter of 12 November 2024 saying "limiting my attendance at team meetings and isolating me from the broader HR team, making it impossible to fulfil my role. The instruction from Lydia, which included preventing other team members from engaging with me, have created a toxic and hostile working environment that has forced me to resign from my role under the constructive dismissal."

61. There does seem to be a change in position from the Claimant. On the simple reading of the resignation letters, a possible explanation for this is that it took the Claimant until events on Monday to appreciating fully that the ban was on speaking to anyone in HR not just those who had raised grievances against her.
62. Given the short timeframe in which the Claimant changed her mind, I do not believe that I can find that the Claimant has no reasonable prospect or even little reasonable prospect of success in explaining her change of position. I certainly do not think that she maintained the position that she was happy with the instruction not to speak to staff for long enough for her to have little or no reasonable prospect of successfully overcoming any argument based on waiver of breach/affirmation of contract.
63. In any event, exactly the same matter is live as to the question of detriment due to whistleblowing, where the Claimant's response to the alleged detriment is largely irrelevant (save potentially to the limited extent of deciding whether something is a detriment).

Fabricating allegations, suspending access, reducing the scope of the Claimant's role.

64. These are matters that need to be determined on the evidence. Taking the Claimant's case at its highest there is no basis to strike these allegations out. There is nothing that has been put before me that justifies ordering a deposit on these arguments. As close as I get is taking judicial notice of the fact that systems access is often limited for staff who have resigned. However, I do not have evidence before me of the Respondent's standard procedure in this regard and therefore do not consider it would be safe for me to order a deposit based on that generalisation.
65. It follows that I am not prepared to strike out under rule 38(1)(a) or apply a deposit under rule 39 to the Claimant's claims based on prospects of success.

Conduct of litigation – Respondent's application

66. There are two distinct parts to this application: one is about the effect of the Claimant's general correspondence and the second is specifically about alleged intimidation of witnesses by the Claimant.

General correspondence

67. As to the Claimant's general correspondence, Mr Sutton KC characterises the Claimant's correspondence as persistent and oppressive in a manner

that is disproportionate.

68. On any assessment, the Claimant has undoubtedly sought to do the following:

- a. Draw a wedge between the Respondent and its lawyers including by suggesting the lawyers have given poor advice, suggesting obtaining independent opinions proving the same, and suggesting seeking recovery of fees in respect of poor advice;
- b. Complain directly to Osbourne Clarke, its compliance staff and the SRA about Ms Davies and Mr Cubitt and their conduct of the case; and
- c. Made numerous and lengthy applications to the Tribunal.

69. Whilst I am not able to say that this conduct is scandalous or vexatious, it clearly to my mind reaches the level of being unreasonable conduct of the proceedings. The tone and nature of the Claimant's correspondence are all unusual and I agree would be likely to be oppressive to those receiving many of them (especially given the high volume of such correspondence).

70. I do not feel able to say that the Claimant's purpose in acting as she has been was to run up costs (although this will undoubtedly have been the effect of some of the correspondence). Indeed, there are some similarities between the tone of the correspondence in the litigation and the Claimant's correspondence with and about colleagues during employment. Without needing to go into too much detail, I would describe the tone of that correspondence with and about colleagues as direct to the point of running the risk of being seen to be abrupt and/or rude. It also shows that the Claimant is prepared to put forward her views stridently about issues that one might not normally expect her to (e.g. commenting about colleagues she was not managing). These similarities suggest that this may simply be the Claimant's style of communicating generally rather than any plan to increase costs.

71. Even though I consider much of this correspondence unreasonable conduct of the litigation, I do not find that it has rendered a fair trial no longer possible nor does it evidence deliberate and persistent disregard of required procedural steps. I note that the Respondent is still instructing the same solicitors. Those solicitors can be expected to have quite "broad shoulders" when it comes to complaints from litigants in person, including to regulators. I can see no impact of this conduct on the fairness of the trial.

72. I would not have found that strike out would have been proportionate in any event. The conduct might be said to be extreme but it is certainly not unheard of. If this correspondence is to have costs consequences for the Claimant (and it may well do in due course), I consider that a sufficient response.

Witness intimidation

73. As to the intimidation of witnesses, the alleged scandalous, vexatious or unreasonable conduct the Respondent relies on is: the private criminal prosecution of Ms Kopanska and in particular a message sent to her regarding a link between that prosecution and giving evidence in these proceedings on 2 July 2025; and the pre action letter sent to Ms Reid on 21 July 2025.

74. A preliminary question is whether this conduct amounts to conduct of these proceedings. There is a potentially important distinction between the Claimant's conduct and the manner in which they have conducted proceedings (per para [29] in **Bennett**).

75. Many of the recorded cases in this area (**Hatfield** referred to above or **Gainford Care Homes Ltd v Gemma Tipple, Margaret Ann Roe** [2016] EWCA Civ 382 for example) relate to physical threats either at or just outside Tribunal premises where the question of whether conduct is conduct of the proceedings is essentially not in dispute. As is clear from **Bolch**, conduct that is "outside the court room and outside the ambit of legal correspondence [in this case]" can still amount to conduct of the proceedings. An example given in **Bolch** is that a "Tribunal might find that if there were a threat that unless proceedings were withdrawn some course or other could be taken" and thereby "would amount to a scandalous method of conducting those proceedings."

76. I am unaware of any cases specifically relating to whether the threatening or issuing of proceedings in other jurisdictions can amount to conduct of these proceedings. However, I am conscious of Lord Summers' comment in **A v B** about witness intimidation being an obvious example of conduct that might justify strike out under this heading. It would seem that the form of that intimidation is largely irrelevant. If the Claimant's purpose in doing an act was even in part to try to discourage a witness from giving evidence in these proceedings, that is conduct of these proceedings.

77. I have no hesitation in finding that at least part of the Claimant's motivation

in bringing a private criminal prosecution of Ms Kopanska was to discourage her from participating as a witness in these proceedings because:

- a. The Claimant's own email of 9 January 2025 clearly linked alleged witness intimidation with the fairness of the tribunal process showing she was alive to the issue.
- b. The Claimant in her own application says Ms Farmer reporting her to the police was a litigation tactic. Again, this evidences a link between criminal referral and litigation tactics in the Claimant's mind;
- c. The importance the Claimant placed throughout on the Respondent not having Ms Kopanska available as a witness to give evidence (see for example the emails of 20 February 2025 and 13 July 2025). It has been a key plank of the Claimant's theory of why she would win the case that Ms Kopanska would not be available;
- d. The Claimant's email of 20 February 2025 referred to her private criminal prosecution under a heading about the availability of Ms Kopanska as a witness – implicitly linking the two things; and (most importantly)
- e. The Claimant's message to Ms Kopanska on 2 July 2025 with its inescapable subtext that giving the evidence suggested in the message may avoid the defamation proceedings.

78. These same factors then affect the interpretation of the pre action letter to Ms Reid and justify drawing a similar inference as to the purpose of that letter. I also note the proximity of timing between the Claimant starting to include reference to Ms Reid as a witness in her email on 13 July 2025 and then sending the pre action letter on 21 July 2025.

79. I accept that discouraging them from acting as witnesses may not have been the sole purpose of treatment of either Ms Kopanska or Ms Reid. Clearly the Claimant felt genuinely unhappy about grievances having been raised against her in circumstances where she believed this to be a concerted effort to undermine her on spurious grounds. I accept that was also part of her motivation for the alleged conduct in relation to both Ms Kopanska and Ms Reid.

80. As to whether the conduct was scandalous, unreasonable or vexatious, essentially it largely follows from my finding that her purpose was, at least in part, to prevent them acting as witnesses that this conduct was scandalous, unreasonable or vexatious (see Lord Summers in **A v B**). To

the extent that I need to go further, in relation to Ms Kopanska, I consider that it was scandalous vexatious and unreasonable primarily because the subtext of the message on 2 July 2025 suggests proceedings might be dropped if Ms Kopanska changed her position, implying that the proceedings themselves had little value for the Claimant other than as a tool in this litigation. Whilst I also note that the private prosecution and the appeal were dismissed both in what appear summary fashion by the Polish courts, I do not know anything about Polish criminal law. It is conceivable that it might have made some difference to the analysis had the Claimant's prosecution succeeded, but it did not.

81. The conclusion in relation to Ms Kopanska justifies drawing the same inference in relation to the letter to Ms Reid. I do not consider the fact that the Claimant did not then ultimately issue proceedings changes the analysis significantly. Again, had a claim been issued and succeeded that might have been a different matter. If anything, sending a letter before action but not then issuing proceedings might reinforce the view that the letter was primarily an intimidation tactic but there are many reasons why a claim might not ultimately have been issued, especially in a costs shifting jurisdiction.
82. I find no basis to say that the Claimant has conducted proceedings unreasonably or otherwise as regards Ms Coman in order to intimidate her. There has been no evidence put before me to substantiate Ms Coman's concern that the Claimant was seeking to or had obtained her address.
83. I then turn to the question of whether there is a significant risk that a fair hearing is no longer possible.
84. The situation as it now stands is that the Respondent has signed witness statements from Ms Kopanska, Ms Reid and Ms Coman, all of which broadly support the Respondent's pleaded case. However, all three are now saying they do not want to attend the hearing to give evidence. Ms Coman and Ms Reid are based in the UK and could be compelled to give evidence by way of witness order notwithstanding their reluctance. However, Ms Kopanska being resident in Poland, is outside the jurisdiction and the Tribunal has no power to compel her to attend to give evidence. Any witness giving evidence would be largely immune to prosecution or litigation based on the evidence given. That does not mean that the Claimant might not try misguidedly to pursue such claims.
85. In terms of chronology, the Respondent's witness statements were signed

in August 2025, whilst the Polish criminal proceedings were still live and after the letter before action had been sent to Ms Reid. At that point, they were clearly not intimidated to the point where they were not prepared to contradict the Claimant's case.

86. There was no witness evidence before me from Ms Kopanska, Ms Coman or Ms Reid as to the reasons they do not want to attend the final hearing. However, I see no reason not to accept what the emails in the bundle say about this.

- a. Ms Kopanska says in her email of 2 April 2026 that essentially this boils down to a fear of being potentially exposed to "personal attacks or retaliation" in light of the stress and "professional and personal impact" of dealing with the private criminal prosecution.
- b. Ms Reid says that she found dealing with the threat of High Court proceedings very stressful and trying and that she wants to protect her own health and mental wellbeing.
- c. Ms Coman is also worried about the Claimant's reaction and its impact on Ms Coman's health.

87. As to Ms Coman and Ms Reid, I have seen no sufficient evidence to justify a conclusion that either is too unwell to attend. Their concerns over the process of giving evidence being stressful are not significantly different to many witnesses before a hearing.

88. I do not consider that there is sufficient evidence before me to reach the conclusion that, despite their reluctance to give evidence voluntarily, if required to attend under witness order and give evidence under oath/affirmation Ms Coman and Ms Reid will be unable to manage that fear of the Claimant and/or are likely to tailor the evidence to fit with the Claimant's case. That is not what they say in their emails and there is no other evidence suggesting this is the case.

89. With Ms Kopanska the situation is different. She is not going to attend to give evidence and cannot be required to attend. I accept that, at least in part, this is due to the intimidation she has been subjected to as set out above. The key question is therefore whether there is a significant risk as a result of her absence that the hearing will be unfair or that any judgment in favour of the Claimant would have to be regarded as unsafe.

90. Ms Kopanska is an important witness. It would have been preferable to hear live evidence from her. However, the Respondent has a signed statement

from her, which will be given such weight as the Tribunal considers appropriate. Much of the contents of Ms Kopanska's statement regarding the contents of her own grievance refer to emails contained in the bundle. The Respondent can take steps (or the Tribunal can order of its own volition) to have two of the three individuals who submitted grievances attend at the hearing and will be able to hear evidence from them on the question of whether there was a co-ordinated raising of baseless grievances. That is the key matter that all three of Ms Kopanska, Ms Coman and Ms Reid can give evidence on. As an allegation of orchestration or co-ordination, there is inevitable overlap between the evidence the three of them can give, which makes the absence of any one significantly less problematic for the fair determination of proceedings than would be the case if their evidence was separate.

91. In those circumstances, I consider that there is not a significant risk that a fair hearing is no longer possible (even without Ms Kopanska) and the Respondent's application to strike out the claim under rule 38(1)(b) is rejected.

Conduct of litigation – Claimant's application

92. The Claimant's application to strike out the Respondent's defence is based on several grounds.
93. It relies in part on two assertions that I am unable to determine on the facts before me including as to:
- a. The Respondent misrepresenting a post the Claimant allegedly made about the US presidential election; and
 - b. Manufacturing minutes of a meeting on 11 November that the Claimant alleges did not take place.
94. These are matters that will have to be determined by the panel hearing the full merits hearing. I am unable to say that there has been scandalous, vexatious or unreasonable conduct of the proceedings in relation to these points.
95. The Claimant relies on an apparent contradiction in the Respondent's evidence regarding grievances against her being both independent and collective. This relates to the merits of the Respondent's defence and is, again, something that will have to be determined by the panel hearing the full merits hearing.
96. There are three matters that might realistically be said to be unreasonable

conduct of the proceedings.

97. The first is the Claimant being reported to the police by the Respondent. I am not prepared to strike out in relation to this point because, even if I were to find it unreasonable conduct of the litigation, there is no suggestion from the Claimant that she is going to change her evidence at all as a result of this alleged intimidation. Therefore, there is no significant risk to the fairness of the final hearing as a result.
98. The second is the suggestion that the Respondent has intimidated witnesses who might have supported the Claimant's evidence. The Claimant relies on a transcript of Ms Farmer speaking to Temi Afolabi. Having reviewed the relevant part of this transcript, I find that there is nothing within it that is even unreasonable or could be said to be intimidating or discouraging Ms Afolabi from giving evidence to support the Claimant. The Claimant also refers to Jawarya Tahir signing a settlement agreement with the Respondent that prevents her from giving evidence. The Respondent denies this contains such a prohibition. Whilst I have not seen this agreement, I take judicial notice that such agreements generally include carve outs allowing the giving of evidence and a witness order would override any contradictory contractual obligation in any event.
99. Moreover, the Claimant has not persuaded me that either individual mentioned in her submissions has relevant evidence to give to the matters set out in the list of issues. The Claimant explained their evidence very much in the context of describing their own treatment, which seems largely or wholly irrelevant to the issues in this case.
100. The final point is the Claimant's suggestion that the Respondent has manufactured evidence of intimidation by asking Emilia Coman, Cheryl Reid and Kamila Kopanska on 2 April 2026 whether they were prepared to give evidence. There is no evidence to support this allegation. Even if the question was asked by the Respondent knowing the answer, I see no reason to disbelieve the answers given by the three individuals as to their reluctance to give evidence. Witnesses not wanting to attend hearings is quite common. In the circumstances set out above, I would have found it unusual had there not been some trepidation from these three individuals. Even if this is a rouse by the Respondent, and I do not accept that it is, it would not affect the fairness of the final hearing such that it would be proportionate to strike out the defence. The Claimant has made it a central

plank of numerous communications that she does not expect these individuals to attend and thinks her case will be strengthened as a result.

101. The Claimant's application to strike out the defence under rule 38(1)(b) is rejected.

Case management

102. The Respondent is requested to provide to the Tribunal by return (without copying the Claimant) addresses at which Ms Coman and Ms Reid can be contacted for the purpose of issuing witness orders together with any preference as to which day or days of the hearing they be ordered to attend.

Approved by
Employment Judge **T Perry**

Date 24th April 2026

Judgment sent to parties on:
Date: 24th April 2026

For the Tribunal Office

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