



# EMPLOYMENT TRIBUNALS

**Claimant:** AB

**Respondent:** Indivior UK Ltd

**Heard at:** Watford by CVP                      **On:** 30 August 2024

**Before:** Employment Judge S. Matthews

## Representation

**Claimant:** Mr. Roberts (counsel, acting pro bono)

**Respondent:** Mr. Mugliston (counsel)

# JUDGMENT

The claim is dismissed. XY does not have standing to bring a claim on behalf of the estate of AB.

# REASONS

1. The claim has been brought by XY in respect of alleged discrimination by the respondent concerning his daughter AB, who sadly died in March 2023.
2. Early conciliation started on 19 June 2023 and ended on 31 July 2023. The claim form was presented on 21 September 2023. The matter was listed for a case management hearing today. References to pages in the bundle below are set out in brackets(x).
3. At the outset of the hearing, I heard submissions from counsel for the claimant and counsel for the respondent on the issue of whether the claim should be struck out, dismissed or stayed on the grounds that XY did not have standing to bring a claim on behalf of the estate of AB. Both counsel drew my attention to the Law Reform (Miscellaneous Provisions) Act 1934 section1(1) and provided me with the following authorities prior to the hearing:  
Fox v British Airways UKEAT/33/12  
Jennison v Jennison and another [2022] EWCA Civ 1682  
Harris as personal representative of Andrews (deceased) v Lewisham and Guys Mental Health Trust [2000] IDS 660
4. There were several issues and facts which were not in dispute which I record here:  
The cause of action rests with the estate of AB;

XY does not have a grant of probate or letters of administration. He has applied for letters of administration but has not received them as at today's date;  
Accordingly it is accepted that XY did not and still does not have standing to institute proceedings on behalf of the estate;  
If there is no entitlement to institute proceedings, then any proceedings instituted must be a nullity;  
That cannot be cured. If and when he obtains standing XY would be required to issue fresh proceedings on behalf of the estate.

5. Mr. Roberts invited me to exercise my discretion to stay the claim while XY waited for letters of administration. He said that would be in the interests of justice as it would prevent delay; the new claim would be linked to the existing claim. He envisaged the existing claim being dismissed at that time and XY being permitted to continue with the new claim. Alternatively he suggested that the current hearing be adjourned and an open preliminary hearing listed at a future date, by which time the claimant may have received letters of administration.
6. I declined to exercise my discretion to stay the claim. That would leave the matter 'in limbo' potentially indefinitely as there is no certainty when or indeed if XY will obtain letters of administration. Further I do not accept that staying the existing claim will alleviate delay. The new claim will still need to be served on the respondent, the respondent given time to respond and listed for a case management hearing. At that hearing it may be considered together with the existing claim, but matters would not have proceeded more quickly because there was an existing claim.
7. There is no prejudice to the estate of AB as the person appointed to manage the affairs of the estate (which may well be XY) will be able to issue and conduct proceedings once appointed.
8. In deciding to dismiss the claim I have considered rules 26,27 and 37 of the Employment Tribunals Rules of Procedure 2013 as amended. Rules 26 and 27 provide that as soon as possible after the acceptance of the response, the Employment Judge shall consider the documents. If the Employment Judge considers either that the Tribunal has no jurisdiction to consider the claim, or that the claim has no reasonable prospect of success, the Tribunal shall send a notice to the parties ordering that the claim shall be dismissed unless the claimant presents written representations to the Tribunal explaining why the claim should not be dismissed. Rule 37 deals with strike out of a claim on grounds including that it has no reasonable prospects of success. In the case of rule 37 the party in question must have been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing. The hearing should be held in public.
9. The rules do not explicitly deal with the situation here, where a claim is brought by a person who does not have standing to bring the claim. Clearly the claim has no prospects of success. The bringing of a claim by someone who does not have standing is not an error of procedure but renders the proceedings a nullity.
10. The claim initially came before Employment Judge George. At that point it was not known for certain that the claimant did not have standing. On 26 March 2024 XY was asked to forward any grant of probate or letters of administration he held on behalf of the estate or set out the basis on which he says he was entitled to act on behalf of her estate (33). At the same time the claim was listed for a case management hearing. XY replied on 17 May 2024 stating the Probate Office had informed him that letters of administration would be issued to him within the next 16 weeks (35).
11. The next time the claim came before an employment judge was today. Both counsel came to the hearing today prepared to address the question of whether the claim should be allowed to proceed. I decided that in accordance with the overriding objective, in particular avoiding delay and having ensured the parties were on an equal footing, it would be proportionate to dismiss the claim now. XY has been given notice of the issue. It was agreed that he currently has no standing to bring the claim and the matter could not be rectified in the future.

12. It would not be in the interests of justice to postpone today's hearing to a future date when the letters of administration may have been received. There is no certainty that they will be received in near future. Both parties came prepared to argue the point about XY's standing to bring proceedings today. Listing a further hearing would cause delay and would not be a proportionate use of the resources of the tribunal.
13. Accordingly, the claim is dismissed, the claimant having no standing to bring the claim.

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Employment Judge **S. Matthews**

Date 30 August 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON  
16 NOVEMBER 2024

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FOR THE TRIBUNAL OFFICE

**Notes**

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>