



EMPLOYMENT TRIBUNALS

Claimant: Ms S Fox

Respondent: Ministry of Defence

Heard at: Cambridge

On: 17 March 2026

Before: Employment Judge Tynan (sitting alone)

Appearances

For the Claimant: Did not attend and was not represented, but made written representations

For the Respondent: Mr A Tinnion, Counsel

PRELIMINARY HEARING IN PUBLIC RESERVED JUDGMENT

The Claimant's claim is struck out pursuant to Rule 38(1)(e) of the Employment Tribunal Procedure Rules 2024 because the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim.

REASONS

Introduction

1. At a case management preliminary hearing on 20 January this year, acting on my own initiative, I determined that there should be a public preliminary hearing to determine whether the claim, or any part of it, should be struck out pursuant to Rule 38(1)(e) of the Employment Tribunal Procedure Rules 2024, on the grounds that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or that part of it.
2. The Claimant, who is vulnerable, has requested that her claims are determined by way of a 'Written-Only Procedure'. Following a previous hearing on 20 January 2026 I posed a series of questions to secure a better understanding of how this might be structured. I also asked the following questions of the Claimant:

"I shall also require the Claimant's views as to whether a written questions and answers format would enable the case to be dealt with fairly and justly if, as has been suggested there are about 80 discrete complaints and this number might increase to just under 140 if all of the amendments are permitted. For example, how might the Claimant's non-attendance impact upon the Respondent's and the Tribunal's ability to explore the following issues with her and with the Respondent's witnesses:

- (i) Any disputed issues of fact;
- (ii) Whether and, if so, which of the claims are out of time, including to what extent some or all of the matters complained of constitute a continuing act;
- (iii) The factors relevant to why it might be just and equitable to extend time for any claims that are out of time;
- (iv) The Respondent's knowledge or imputed knowledge both of her disability and of the ways in which she was disadvantaged by it;
- (v) Whether the named comparators are comparators for the purposes of s.23 of the Equality Act 2010;
- (vi) What 'things' arose from her disability;
- (vii) Her views as to any legitimate aims relied upon by the Respondent as potentially justifying any unfavourable treatment of her, and whether it acted proportionately in the matter;
The PCPs sought to be relied upon, including whether they are limited to how she was treated rather than evidence of a wider practice;
- (viii) The extent to which others were disadvantaged by any PCP relied upon for any indirect discrimination claim;
- (ix) Her views as to any legitimate aims relied upon by the Respondent as potentially justifying any indirectly discriminatory PCP, and whether the Respondent acted proportionately in the matter
- (x) The extent to which the Claimant was disadvantaged by the PCPs relied upon, including what she means when she refers to PCPs having a worse effect on the mental health of someone with a disability;
- (xi) The practicality of the contended for adjustments and to what extent they might ameliorate any disadvantages;
- (xii) Why the conduct complained of as amounting to harassment may have been unwanted;
- (xiii) Why the conduct complained of as amounting to harassment related to disability;
- (xiv) Why it was reasonable in the circumstances for the Claimant to consider that the conduct complained of as amounting to harassment led to the creation of an adverse working environment;
- (xv) Whether she did protected acts; and
- (xvi) Why she says the detriments complained of were because she did protected acts?

Evidence

3. I retain a 1902-page preliminary hearing bundle from the hearing on 20 January 2026 which mainly comprises of correspondence and documents generated in the course of the proceedings. The Claimant filed a 146-page bundle with the Tribunal towards the end of the day on 13 March 2026, together with a 29-page document entitled “PARTICULARS OF CLAIM: Continuing Act of Disability Discrimination”. The Particulars were appended to a fourth claim which the Claimant presented to the tribunals on 18 February 2026, albeit which has been rejected by a Legal Officer, apparently for want of an acas early conciliation certificate. I believe the Claimant is seeking reconsideration of the rejection of the claim. Should this be granted either by me or another judge, that claim will be case managed separately. It does not automatically follow that because I have decided to strike out these three claims that the fourth claim will also be struck out.

4. I have been provided with emails from the Claimant dated 17, 18, 25 and 26 February 2026 and 5 and 9 March 2026, the last of which concerns the rejection of the fourth claim. There are 16 attachments to the various emails.

5. At an early point in the hearing, I asked Mr Tinnion to identify any relevant medical evidence in the Respondent’s hearing bundle. Mr Tinnion collated this information during a break in the hearing and summarised the position in an email sent to the Tribunal at 11.42am. In the interests of transparency, I asked that he copy the Claimant into his email. A little over an hour later, just after the hearing had finished and I had reserved my judgment, the Claimant emailed the Tribunal at 1.04pm. There were 12 attachments to the email. The Claimant said that Mr Tinnion’s summary was incomplete. She wrote:

“To prevent the tribunal working of a incomplete return which presents risk, HMCTS awareness of my disability is as per the schedule of foreseeability table below.

Schedule of Foreseeability Documents

Event	Document Name	What it proves?	Which limb it supports?
1	25/01/2024 C PL ET11	Early disclosure of CPTSD, anxiety and depression; deterioration triggered by meetings, pressure and interaction; need for written processes and no meetings.	Functional limitation; Predictable trigger; HMCTS knowledge
2	25/01/2024 C APP RARQT	Disclosure that the Claimant rarely leaves home; travel causes anxiety; concentration impaired; written processes required;	Functional limitation; Predictable trigger; HMCTS knowledge

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		early formal RA request.	
3	16/02/2024 C PL ET12	Evidence of cognitive overload, poor concentration, deterioration from verbal interaction, and stress-triggered impairment; clear trigger → deterioration chain.	Functional limitation; Predictable trigger; Causal chain; HMCTS knowledge
5	15/03/2024 C PL ET13	Evidence that trauma triggers and adversarial processes worsen impairments; meetings cause deterioration; systemic failures linked to psychiatric harm.	Functional limitation; Predictable trigger; Causal chain; HMCTS knowledge
6	15/03/2024 C APP RAWRTRQT	Disclosure that travel causes anxiety; remote/written processes required; early RA request for hearing mode.	Functional limitation; Predictable trigger; HMCTS knowledge
13	23/05/2024 C SUB DISEVD	Extensive disability-impact evidence: CPTSD, anxiety, depression; hyperarousal, emotional flashbacks, cognitive shutdown; predictable triggers (verbal interaction, pressure, unpredictability) → deterioration; explicit need for written-only predictable processes.	Functional limitation; Predictable trigger; Causal chain; HMCTS knowledge
16	17/06/2024 C SUB CMPHPrep	Direct notice that disability was worsening; long video hearings would cause deterioration; administrative unpredictability increased psychiatric risk; explicit limit on hearing duration.	Functional limitation; Predictable trigger; Causal chain; HMCTS knowledge
19	24/06/2024 C APP OPPSPP	Explicit notice that postponement and drift exacerbate impairments; deterioration from delay;	Functional limitation; Predictable trigger; Causal

		need for predictable, time-limited processes; repeated warning about 3-hour limit.	chain; HMCTS knowledge
26	03/10/2024 C APP CMPH Pack (Refer to Q12, 13 & 15)	CMPH Pack containing disability-impact material, including the 8 Jan 2024 Formal Complaint; detailed functional limitations; warnings that tribunal processes and administrative instability risk psychiatric injury; clear notice before 9 Oct 2024 hearing.	Functional limitation; Predictable trigger; Causal chain; HMCTS knowledge.

Note on Excluded Documents - my later RA requests (14 Oct 2024, 5 Nov 2024, 6 Nov 2024, 30 Dec 2024, 14 Mar 2025) are excluded because they do not introduce new disability-impact information.

The attachments herewith are: -

1. 27 June 2024 RS confirmation of my disabled status
 2. 23 May 2024 (Event 13 in above schedule) the medical disability evidence I provided to tribunal orders of 16 May 2024, inclusive of attachments and index.
 3. 29 April 2025 (dated 17 April) - letter from my GP supporting no hearings
 4. Schedule of Respondent Disability Knowledge - from my 26 February 2026 Amended Particulars (provided in 13 March 2026 bundle)
 5. Event 2, 6, 13, 16, 19, 26 documents referred to in Schedule table above excluding 1, 3, 5 (as these are the 3 x ET1 pleadings already held by all parties).
 6. 21 May 2025 Letter from EJ George which confirms at 2nd to last paragraph that my GP letter is a material change in circumstances.”
6. I think the Claimant has misunderstood my request of Mr Tinnion. I had not invited him to summarise the Claimant’s position, rather to identify where in the bundle I might find any medical reports or other medical records setting out the views of any medical professionals, including any occupational health specialists.
7. Of the 12 attachments to the Claimant’s email, all but one were already included within the Respondent’s hearing bundle. The remaining document, dated 26 February 2026, is one of the 16 attachments to the Claimant’s other emails already referred to. Although the Claimant considers Mr Tinnion’s summary to be incomplete, I cannot discern from the information above or from my review of the 28 documents appended to the Claimant’s emails, any additional medical evidence over and above that identified by Mr Tinnion.

Law

8. Although rule 38(1)(e) makes specific reference to a fair trial no longer being possible, the tribunal must also ask itself whether strike out would be a proportionate response – Bolch v Chipman [2004] IRLR 140. This was affirmed by the Court of Appeal in Blockbuster Entertainment Ltd v James [2006] EWCA Civ 684, when Sedley LJ described the power to strike out a claim as draconic and one that should not be readily exercised.
9. In Smith v Tesco Stores Limited [2023] EAT 11, an appeal against the strike out of a claim, His Honour Judge Tayler said that it was always worth going back to the wording of the overriding objective in what is now rule 3 of the 2024 Rules.
10. In my record of the hearing on 20 January this year, I drew the Claimant's attention to the EAT's decision in Leeks v University College London Hospitals NHS Foundation Trust 2024 EAT 134, which reviewed the law on strike out, including the possibility or otherwise of a fair trial. His Honour Judge Tayler noted that a claim:

“... could be struck out under Rule 37(1)(e) ETR even where the party against whom the application is made has done nothing wrong. The ill health of a party could mean that “it is no longer possible to have a fair hearing in respect of the claim or response” although a party cannot be criticised for being unwell. ...”

11. A fair trial must take place within a reasonable period: Peixoto v British Telecommunications PLC UKEAT/0222/07/CEA. I have also previously drawn the Claimant's attention to the EAT's decision in Emuemukoro v Croma Vigilant (Scotland) Ltd [2022] I.C.R. 327. For convenience I set out again here what Choudhury J said at paragraph 19 of his judgment:

“I do not accept Mr Kohanzad's proposition that the power can only be triggered where a fair trial is rendered impossible in an absolute sense. That approach would not take account of all the factors that are relevant to a fair trial which the Court of Appeal in Arrow Nominees [2000] 2 BCLC 167 set out. These include, as I have already mentioned, the undue expenditure of time and money; the demands of other litigants; and the finite resources of the court. These are factors which are consistent with taking into account the overriding objective. If Mr Kohanzad's proposition were correct, then these considerations would all be subordinated to the feasibility of conducting a trial whilst the memories of witnesses remain sufficiently intact to deal with the issues. In my judgment, the question of fairness in this context is not confined to that issue alone, albeit that it is an important one to take into account. It would almost always be possible to have a trial of the issues if enough time and resources are thrown at it and if scant regard were paid to the consequences of delay and costs for the other parties. However, it would clearly be inconsistent with the notion of fairness

generally, and the overriding objective, if the fairness question had to be considered without regard to such matters.

12. Employment Tribunals are required to have regard to Presidential Guidance. All courts and tribunals should pay regard to the Equal Treatment Bench Book (“ETBB”). This was explored further by the EAT in Habib v Dave Whelan Sports Limited T/A DW Fitness First [2023] EAT 113. At paragraph 11 of the EAT’s judgment, His Honour Judge Beard said:

“... The purpose of both documents is to provide Judges with the tools which assist in ensuring a fair hearing when dealing with, amongst others, vulnerable witnesses. ...

This practice guidance goes into significant detail as to what steps might be taken and makes it clear paragraphs 30 to 33 that although the Equality Act does not apply to judicial functions making adjustments may be necessary because of rule 2 of the Employment Tribunal Rules 2013 requiring cases to be dealt with fairly and justly, the requirements of articles 6 and 14 of the European Convention on Human Rights, that the common law has justice and fairness as core concepts and the UK’s obligations under article 13 of the UN Convention on the Rights of Persons with Disabilities. The guidance then refers to the importance of paying regard to the ETBB’s guidance and good practice, noting that **Rackham v NHS Professionals Ltd** UKEAT 0110 15 (see below) amongst other cases provides authority for this.”

13. The applicable legal principles were summarised as follows:

“THE LAW

13. In **Rackham** [*Rackham v NHS Professionals Limited UKEAT/0110/15/LA*] Langstaff J (P) stated: 50. It seems to us we have to ask here whether there was any substantial unfairness to the Claimant in the event. We have to consider the whole picture, and we have to consider fairness not in isolation, viewing his case alone, but as one in which there were two parties. Langstaff J sitting with members indicated that there was no dispute that there was a duty upon the ET to make reasonable adjustments for a disabled party. The case also demonstrates that employment tribunals should make use of guidance in the ETBB. The purpose of adopting this approach is said to be in order to ensure effective access to justice and to “*enable the party to give the full and proper account they would wish to give to the Tribunal, as best as they can be helped to give it*”.

14. **Anderson v Turning Point Eespro** [2019] EWCA Civ 815 deals with the duty of the ET when a party is represented. Giving the lead Judgment with which the other members of the court agreed. Underhill LJ said this at paragraph 27:

In the generality of cases, it is entirely appropriate for a tribunal to leave it to the professional representatives of a party who is under a disability, or indeed otherwise vulnerable, to take the lead in suggesting measures to prevent them suffering any disadvantage. The representatives can be expected to have a better understanding than the tribunal of what the party's needs are, and access to appropriate medical advice; and there is also a risk that if the tribunal itself takes the lead in seeking to protect a party (or witness) it may give the impression of taking their side. This involves no abdication of responsibility by the tribunal. Of course, it retains ultimate responsibility for seeing that a disabled party receives a fair hearing, and I do not rule out the possibility that there may be cases where a tribunal should take steps for which the party's representative has not asked; but those will be the exception, and the default position is that the tribunal can expect a party's interests to be looked after by his or her representatives.

However, at paragraph 32 he went on to say:

*The foregoing should not be regarded as qualifying the importance, as expounded in such cases as **Rackham** and **Galo**, of tribunals making whatever adjustments are reasonably required to ensure that vulnerable parties or witnesses are enabled to present their case and/or give their evidence effectively, or of their ensuring that they have the appropriate information for that purpose. That follows from the basic common law duty of fairness and is reinforced, where the vulnerability is the result of disability, by the various international instruments referred to in **J v K** (although, as there stated, it is not clear that they add anything to the common law position).*

15. It is tolerably clear from the case law that a tribunal should rely on a representative to inform as to the appropriate adjustments to assist them in conducting a fair hearing. However, ultimately the duty falls upon the employment tribunal to ensure that a hearing affords a disabled individual effective access to justice. This must apply to the process of the hearing and in our judgment must equally apply to the analysis and deliberation by the employment tribunal in reaching its conclusions. If that were not so the effectiveness would be undermined.”

14. The EAT then explored the approach that should be taken on appeal in cases where a tribunal has failed in its duty to make appropriate adjustments. HHJ Beard noted in particular what was said by His Honour Judge Tayler in **Buckle v Ashford & St. Peter's NHS Hospital Trust & Anr.** UKEAT/0054/20/DA, namely:

“23. Conversely, there may be circumstances in which a party requires an adjustment that is of such fundamental importance that without it being made there cannot be a fair hearing. In such a case it is for the appellate court to determine as a matter of substantive fairness whether the

adjustment requested was such that the failure to make it rendered the hearing unfair because the party was not able to sufficiently participate in the hearing and so was not given a fair trial, just as would be the case if the hearing was improperly conducted in the party's absence."

15. In its conclusions, the EAT said:

"30. ... An employment tribunal to comply with its duties to ensure a fair hearing must make an adjustment which would allow effective participation. In order to do that it must be able to identify the specific barriers which a condition or disability causes. In order to make such an identification it must have some evidence, which is not necessarily, but may be, expert evidence, to assist it in understanding the barriers. A tribunal can only operate on the evidence before it.

31. ... we consider that where there is an unrepresented party, or a party with intermittent representation, it would be useful for the case management order to make clear that, if the status of a witness, their condition or disability is something that will require adjustments to be made to the usual procedure, that evidence will need to be produced. That evidence could, for instance, take the form of part of the witness statement of the person for whom the adjustments are necessary or perhaps documentary disclosure of medical information. It is not necessary for an expert evidence order in all cases."

16. In Habib, the EAT cited Langstaff J's observation in Rackham that fairness should not be considered in isolation but instead having regard to the need to achieve fairness as between two parties. In the course of his judgment, Langstaff J placed great emphasis on the autonomy of disabled persons and the importance of listening to what they have to say about the adjustments they require or, as Counsel put it in that case, ensuring that the disabled person's voice is heard.

My approach

17. As I previously noted on 20 January 2026, at the case management hearing on 27 and 28 May 2025, Employment Judge Michell considered that medical evidence was required from the Claimant's treating psychiatrist, Dr Ghosh to enable the Tribunal to consider her ability to attend hearings and need for adjustments. The Claimant has not complied with that order or Employment Judge Gordon Walker's further order that she do so. That is regrettable, not just because we obviously expect a party to comply with any orders, but also because Employment Judge Michell evidently took time and some care to identify a range of matters in respect of which the Tribunal would be assisted by having Dr Ghosh's views. As I shall come back to, the Judge evidently had in mind the potential for wide-ranging adjustments to support the Claimant's continued participation in the proceedings.

18. In listing the strike-out hearing, I made clear that I would not be considering strike out under Rule 38(1)(c). However, that does not mean that I can or should disregard the fact that there is limited medical evidence as to the Claimant's ability to participate in these proceedings. The Claimant's failure to do as she was ordered (particularly if her appeal to the EAT has been unsuccessful) and the resulting lack of medical evidence, along with the Claimant's failure to take up the Tribunal's suggestion of a report by an intermediary or to participate in a grounds rules hearing, all inevitably weigh in the overall balance when I ask myself whether a fair trial is no longer possible and whether it would therefore be proportionate to strike out some or all of the claim.
19. I have previously indicated that I might approach the strike-out hearing on the basis that I should ask myself whether a fair hearing will no longer be possible if the adjustments sought by the Claimant are implemented in full, regardless of the availability or otherwise of medical evidence in the matter. I confirm that this is indeed my approach. In which case the starting point is the Claimant's document entitled "WRITTEN-ONLY PROCEDURE ANNEX (Claimant framed)" dated 18 February 2026 (the "Proposed Protocol"), supplemented and/or amended by the written case she filed a few days later.

Evidence of the Claimant's need for adjustments

20. Within these proceedings the Claimant's relies upon depression, anxiety and Complex PTSD as the conditions/impairments which cause her to be disabled. Disability is conceded by the Respondent, though knowledge of the Complex PTSD and any resulting disadvantages remains a live issue.
21. Although the Claimant did not secure a report from Dr Ghosh as ordered, this is certainly not a case where there is no medical evidence available to me. I have been assisted in particular by Dr Ghosh's report of 15 January 2024 (pages 1346 to 1349 of the Respondent's bundle). Although it was authored a little over two years ago, it includes an overview of the Claimant's traumatic childhood and experience of an abusive relationship as an adult. Amongst other things it records that the Claimant has experienced periods of recurring depression since she was in her 20's. If I have understood the report correctly, the Claimant has been prescribed anti-depressant medication for at least the past 10 years, albeit its efficacy has diminished over time. Dr Ghosh wrote:

"She feels abandoned all the time since her early years. She feels chronic emptiness in her chest, as if nothing can make her happy. She can be impulsive. She thinks people talk about her and follow her and they are there to get her. Suzanne however denied experiencing any psychotic symptoms."
22. I have not felt it necessary to go into further detail regarding the Claimant's family or childhood history, partly because this judgment will be publicly available online. However, given the matters referred to in the report, I think it unsurprising that Dr Ghosh was giving consideration at that time to potential diagnoses of Complex PTSD and borderline personality disorder. I am unclear

whether he provided a definitive diagnosis; his report says that this would be explored further, albeit there is no further reference to this in his letter of 18 March 2024 (pages 1344 and 1345 of the Respondent's bundle). Of course, a formal diagnosis is not required in order for a claimant to be disabled within the meaning of the Equality Act 2010. That said, the classification of mental health disorders and their formal diagnosis can assist tribunals in gaining both an immediate and, thereafter in conjunction with other evidence, a more complete understanding of a person's disability and their need for adjustments.

23. I have found the Claimant's GP's letter of 17 April 2025 (pages 1219 and 1220 of the Respondent's bundle) less helpful, in that it captures the Claimant's views rather than the GP's professional assessment of what might work best for the Claimant. The letter records that the Claimant told her GP, Dr Shah that she felt that certain identified adjustments would not be suitable or feasible. The letter concludes with Dr Shah inviting the reader to take the Claimant's views into consideration rather than necessarily endorsing them.
24. As I say, it is unclear whether and, if so, when there was a formal diagnosis of Complex PTSD. Whilst I am familiar with depression, anxiety and PTSD by virtue of my interactions with disabled and vulnerable witnesses and tribunal users in my work as a judge, I am not a medical practitioner and, as such, am reliant on the Claimant, the available medical evidence (including occupational health reports), as well as any reliable source materials such as the ETBB for a more rounded understanding. PTSD and Complex PTSD (and indeed borderline personality disorder) and, somewhat surprisingly, anxiety do not feature amongst the 60 or so specific conditions described in Appendix B to the ETBB, in respect of which adjustments are suggested. Depression is referred to in Appendix B, though under the broad heading of 'Mental ill health'.

The hearing on 20 January 2026

25. I have referred already to the series of questions I posed following the hearing on 20 January 2026. In her written case submitted on 25 February 2026, the Claimant has endeavoured to engage with the questions I posed as to how a paper-based hearing would work in practice. Her responses to the further specific issues identified in paragraph (13) of the 20 January 2026 case management summary, for convenience repeated at paragraph 2 above, engage at a more superficial level with the issues at hand. For example, the Claimant asserts, without more, that "these matters do not require oral exploration and can be determined fairly and justly within the written-only procedure". There is no acknowledgement or seeming recognition on the Claimant's part that any of the issues identified by me might be more suitable for determination at a 'live' hearing. This is not necessarily intended as a criticism, particularly if the Claimant has no prior experience of legal proceedings, but it strikes me that she has focused upon her needs rather than the likely practical consequences for a fair trial if her proposals are implemented.

Conclusions

Whether a fair trial is no longer possible

26. The ETBB provides no guidance as to the circumstances in which a court or tribunal might conduct a paper-based hearing or, for example, dispense with the requirement for a party or witness to give 'live' evidence. I have been unable to find any commentary in this regard in any of The Advocate's Gateway Toolkits. Both the ETBB and the Toolkits focus on adjustments that will support attendance and participation at a hearing (whether that hearing is in-person or remote).

27. I have identified the following comment at paragraph 38 of Chapter 4 of the ETBB, which deals with mental disability:

"It may not be suitable for a disabled witness to attend the hearing and give evidence at all. ..."

I have no reason to suppose that the reference to a "disabled witness" in Chapter 4 suggests a difference of approach according to whether the vulnerable person is a party or simply a witness. But if that is right, the authors of the ETBB offer no further guidance as to what a court or tribunal's approach might be where a party or witness cannot attend a hearing, even remotely.

28. When discussing adjustments for people with mental ill health, Appendix B of the ETBB says:

"In severe circumstances, allow evidence to be given before the hearing by video link or in the form of written question and answer, or written submissions to be provided."

There is no indication as to what might amount to 'severe' circumstances. In this case, the Claimant has ruled out giving evidence by video link or an online 'live' question and answer format.

29. Dealing firstly with the practical implications of a paper-based process, the Claimant is an articulate individual, who is evidently capable of advocating her position in writing. Whilst I have no concerns therefore as to the Claimant's ability to answer questions put to her in writing or to formulate questions for the Respondent's witnesses, I do have some concerns as to her propensity to submit lengthy, sometimes repetitive, correspondence and documents to the Tribunal, and the Tribunal's ability or otherwise to manage her in this regard. I do not lose sight of the possibility that this may be linked to the Claimant's disability, for example that it may result from her anxiety. Nevertheless, the most recent hearing illustrates the difficulties that can arise. I ordered the Claimant to file and serve her written case for the hearing by 12 March 2026. Putting aside that she did not do so until towards the end of the day on 13 March 2026, leaving the Respondent with just one working day in which to consider it, the Claimant had by then already submitted seven emails with 16 attachments to the Tribunal touching upon the issues under consideration. She

also submitted a 146-page bundle even though I charged the Respondent with any necessary updates to the previous bundle. As I say, the Claimant followed up Mr Tinnion's email with a further email with 12 attachments (the speed with which she responded evidences at least some ability on her part to respond in 'real time'). It took me quite an amount of time to check whether the 12 attachments to the Claimant's email of 17 March 2026 were already within the Respondent's bundle and thereafter review the documents to establish whether they contained or made reference to medical evidence and occupational health advice which may have been overlooked by Mr Tinnion. It demonstrates why a 'Written-Only Procedure', as the Claimant refers to it, may not be quite as straightforward as perhaps she believes.

30. It does not bode entirely well that the Claimant has not complied with the Tribunal's orders. Putting aside for a moment the orders that have been appealed (potentially unsuccessfully), as I noted in paragraph (17) of my 20 January 2026 case management summary, the Claimant did not comply with Employment Judge Michell's order to provide a mark-up of the Respondent's draft list of issues, with the result that I spent the best part of the last hearing working through the Respondent's draft list of issues in order to satisfy myself that it fairly and accurately captured the Claimant's complaints in the Particulars of Claim for each of her claims. In the Claimant's written case she says, "the Respondent's List of Issues, which relies on these tables, is unreliable and cannot form the basis for determining limitation, continuing act, or the scope of the pleaded claims". If the Claimant is suggesting that the List of Issues incorporated within my record of the 20 January 2026 hearing is unreliable or even simply incomplete, it further illustrates the practical difficulties of a paper-based approach in a case where the bundle currently sits at 1902 pages, with disclosure yet to take place.
31. It is difficult for me to assess the extent to which, if at all, a 'Written-Only Procedure' would lead to additional costs for the Respondent. It would be required to prepare written questions for the Claimant and to analyse her responses in order to prepare any supplementary questions. Bearing in mind, according to the Claimant, there are 150 pleaded claims, this would be time consuming and costly, though the Respondent would of course be spared the cost of an attended final hearing. Of greater concern to me is the burden this approach would place on the witnesses (including the Claimant), not just because it would take them longer to type their responses than to answer questions at a hearing, but also because they would be left to navigate what will certainly be a substantial hearing bundle on their own, without immediate guidance from the Tribunal or the assistance of the parties or Counsel to locate relevant documents or the relevant text within a document. The witnesses would also be unable to secure immediate clarification from the Claimant regarding any of her questions. Instead, this would likely all have to be directed through the judge because of the risk otherwise of witnesses discussing the case with others whilst preparing their responses to the answers that have been put to them.
32. The Respondent's and, if any, the Claimant's witnesses would also be denied the opportunity to observe the proceedings in the usual way, including cross

examination of the Claimant and the other witnesses. Issues invariably arise in the course of the parties' evidence, and during a 'live' hearing these will often be explored with other witnesses or occasionally by recalling a witness. Again, this aspect would be lost.

33. In the course of a hearing, judges frequently direct witnesses to documents in the hearing bundle, clarify questions where needed, adjudicate disputes as to the relevance or otherwise of specific questions and areas of enquiry, steer witnesses back to a question where they may have strayed away from it, and ask follow up questions where this assists in an understanding of the evidence and/or touches upon a key issue. Judges also confer with members as the hearing progresses; they may check their notes of the evidence and their understanding; they will usually explore what further questions they have for a witness; and very often they are called upon to decide applications made in the course of the hearing, including as to the admissibility of evidence and regarding the further disclosure of documents. It is not obvious to me how this oversight might be replicated in a 'Written-Only Procedure', certainly without a significant commitment of both judicial and administrative time and resource. If it was decided that the case should be heard by a judge sitting alone because of the practical difficulties of liaising with members, this would add further to the judge's burden in a case where the issues in my view warrant the involvement of a full Tribunal. It seems to me that this evidence-taking stage of the proceedings might take weeks or even months, particularly if the answers given by each witness are intended to be available to the remaining witness before they then give their evidence. Even if it were felt to be proportionate to dispense with this approach, so that all the witnesses provide their answers at the same time, the judge would still be required to review the questions before they are provided to the witnesses and adjudicate any disputes, having first secured both party's comments. Decisions on such matters in the course of a hearing usually require no more than a couple of minutes of the judge's time. In a 'Written-Only Procedure', involving upwards of 150 claims and where written reasons have to be provided for each decision, I speculate whether this aspect alone might require two or three days of a judge's time. Either the judge would have to be excused from their regular work or the task would have to be accommodated within the judge's normal daily workload of hearings, 'duty' work and other judicial business. If the latter, it would likely extend the task over a number of weeks. To ensure consistency of decision making and avoid duplicated effort, not least different judges having to read into the case, it seems to me that oversight of any written question and answer process, including determination of whether specific questions should be permitted and whether a witness has failed to answer a given question, would necessitate the involvement of the trial judge. I am in no doubt that this would place a particularly heavy burden on the judge in question and take them away from hearing cases and undertaking 'duty' work on other users, adding to an already significant backlog and impacting other tribunal users.
34. There are other respects in which a fair trial would be impacted. Cross examination is a dynamic rather than a static process, as I think my preceding comments illustrate. Even if the parties are afforded the right to ask supplementary questions, a paper-based approach curtails their ability to flex

their approach according to the answers they receive and in the way that would otherwise be available to them during a 'live' hearing where the evidence emerges more organically, along with the parties' and the Tribunal's understanding of the case and evidence.

35. If I strike out some or all of the claim, I will ultimately be denying the Claimant the opportunity to have her complaints adjudicated. However, I weigh in the balance that Employment Judge Michell signalled the Tribunal's desire to put in place a wide range of adjustments that would support the Claimant's participation in some form of 'live' hearing format. It is not only the Claimant's rights that fall to be considered. In addition to the Respondent's and its witnesses' interests in the matter, there is a wider public interest in the proceedings being dealt with efficiently, cost effectively and in a proportionate way, recognising the interests of other tribunal users whose cases deserve to be heard. The Respondent has Article 6 rights, and I am satisfied that these will be materially infringed if I accede to the Claimant's request for a 'Written-Only Procedure'. In this regard, I do not agree with the Claimant that there are no genuine disputed facts requiring oral exploration. Even a cursory review of the various pleadings indicates otherwise. It is overly simplistic to suggest, as the Claimant effectively does, that her claim is founded entirely, or almost entirely, in emails and other documents, and as such that it is capable of being decided on paper. Notwithstanding the often-cited observations of Leggatt J, as he then was, in Gestmin SGPS SA v Credit Suisse (UK) Ltd. & Anr. [2013] ECHC 3560 (Comm), about the distorting effects of litigation on the reliability of oral evidence and the importance of contemporaneous documents when making findings of fact, the established tradition of hearing oral evidence, including its examination at a hearing, remains at the heart of our adversarial system of justice. I agree with Mr Tinnion that parties have a legitimate expectation that they will be afforded an opportunity to test their opponent's evidence in a 'live' setting. It is a cornerstone in particular of the criminal justice system. Whilst these are not, of course, criminal proceedings, nevertheless their significance for the Respondent and its witnesses should not be underestimated. The Claimant filed a Schedule of Loss last year, in which she has valued her claim at a little under £2million. The outcome has reputational implications for both the Respondent and those individuals who are alleged to have discriminated against the Claimant, including by victimising her. The Claimant essentially alleges that there was a concerted campaign against her and that various named individuals set out to create an adverse working environment for her so that she would have no option but to leave. If the allegations are upheld, the Respondent's witnesses might face disciplinary action. But even if they do not, findings that they discriminated against the Claimant by conducting themselves with the purpose of creating a hostile working environment, might be career limiting within the Respondent and beyond. I do not know whether there might be regulatory implications for any of them. In my judgement, fairness requires that the Respondent and its witnesses are afforded an opportunity to challenge the Claimant's evidence at a 'live' hearing, even if extensive safeguards are put in place with a view to making the Claimant feel 'safe' in such an environment.
36. Fairness is not just about affording the Respondent an opportunity to cross examine the Claimant; it is equally important that the Tribunal hears from the

Respondent's witnesses to enable it to come to a considered view as to their credibility and reliability. In my experience, a 'live' hearing is particularly important in discrimination cases where the Tribunal is concerned to understand the reasons why the alleged discriminators acted as they did and took the decisions they did; this usually involves exploring their motives, intentions, attitudes, biases, assumptions and other sub-conscious thought processes, as well as their capacity for self-reflection and awareness of the affirmation and reattribution biases that can drive discriminatory behaviours.

37. A 'live' hearing format also allows the Tribunal to regulate the proceedings and ensure their integrity, for example by ensuring that witnesses do not discuss the case whilst giving their evidence, are not prompted by others in the evidence they give, and do not have regard to pre-prepared notes or extraneous materials, including AI tools, when answering questions. The Tribunal would effectively be left without any means of ensuring these important safeguards are respected, something the Claimant has not addressed.
38. It seems to me that a 'Written-Only Procedure' would also be inconsistent with the principles of open justice, that is to say a hearing in public and open to the public.
39. Although the Claimant says that she has addressed the questions posed by me on 20 January 2026, as I have noted already, her written case engages only superficially with the points I raised in paragraph (13) of the case management summary. I venture that this most likely reflects her lack of understanding and experience of adversarial legal proceedings rather than any conscious desire to be obstructive. As I have noted already, the Claimant says she has 150 pleaded claims across 37 events. Putting aside whether, as the Claimant asserts, this reflects the legal characterisation already contained in her claims, it gives an immediate sense of the scope and complexity of her claims. Even if, for example, all of the unwanted conduct complained of, which is said to amount to harassment, concerns things that were written in emails or other documents, that is not the beginning and end of the matter. From experience, the sender and recipient will need to give evidence and be examined as to the background and context, including related meetings and conversations. Oral testimony assists significantly in an understanding of this background and context, including what the parties likely meant by their communications and how these would likely have been understood by the recipient. In my judgement, oral testimony contributes significantly to a tribunal's evaluation of whether conduct was unwanted, was related to the relevant protected characteristic and, as Mr Tinnion submits, to the issue of whether it was reasonable for a claimant to consider that the conduct in question created the relevant adverse environment. Similar observations can be made in respect of each of the remaining issues identified in paragraph (13) of my 20 January 2026 case management summary, for example: why any comparator relied upon by the Claimant is an appropriate comparator for the purposes of the Equality Act 2010, alternatively to what extent they might be considered an evidential comparator, alternatively how one might construct a hypothetical comparator; whether the Respondent acted proportionately in pursuit of its legitimate aims if it treated her unfavourably for a reason arising from her

disability; why knowledge of disability and the disadvantages it caused should be imputed to the Respondent; and why the Claimant considers that the contended for adjustments might have removed or ameliorated the disadvantages caused by the application of the PCPs in question. In my experience, cross examination on these and the other identified issues is nuanced and does not lend itself to a written question and answer format. I do not propose to work my way through the remaining issues in paragraph (13) to further illustrate the point I am making and have already made at paragraph 36 above.

40. In conclusion, I am satisfied that a 'Written-Only Procedure', which the Claimant maintains represents essentially the only basis on which the case can reasonably go forward, would result in material substantive unfairness to the Respondent, the alleged discriminators and any other witnesses called by the Respondent, as well as impacting upon other tribunal users and placing a significant additional burden on the judge who would oversee the process. In my judgment, a fair trial will no longer be possible if upwards of 150 claims go ahead on that basis.

Whether it is proportionate to strike out the claims

41. In my further judgement, it is proportionate to strike out the claims even though this represents a draconic step. It is not a decision I have reached lightly. I have given the matter anxious consideration. I have touched already upon the competing or balancing considerations that inform the question of whether strike out is a proportionate response in the circumstances. This is not a case of a tribunal or indeed a respondent refusing to countenance adjustments. On the contrary, Employment Judge Michell detailed a wide range of potential adjustments in paragraphs 2.1(c)(i) to (xi) of his case management order sent to the parties on 27 June 2025. In my judgement, the implementation of a number of those adjustments would go a long way to addressing the Claimant's needs and support her ability to participate in the proceedings and provide her best possible evidence. They embody a more proportionate approach than strike out, but they are not available to the Tribunal because the Claimant cannot agree to them. As she says by way of conclusion in her written case:

"... attendance at hearings—whether in person, by CVP, or through live typed exchanges—is not feasible. Written questions and answers are the only safe and effective participation format consistent with the Equality Act 2010, ETBB Chapter 4, and the overriding objective."

42. I have noted the Claimant's proposal of a stay as an alternative to strike out. However, in my judgement there is no realistic likelihood that the Claimant's situation will change. In her document entitled, "WRITTEN-ONLY PROCEDURE ANNEX (Claimant framed)" dated 18 February 2026 the Claimant wrote,

"For the avoidance of doubt, the Claimant's inability to attend verbal hearings is not dependent on symptom fluctuation or future medical opinion."

I cannot see what a stay of the proceedings will achieve if there is no prospect of an improvement in the Claimant's health or at least her ability to participate in some form of 'live' hearing.

43. There is also no real prospect of narrowing the issues so that the claims are more manageable. On the contrary, there are outstanding applications by the Claimant to amend her claims and, as I have noted already, she may be disputing the accuracy of the List of Issues. This is not a case where it might be possible to limit the Claimant to pursuing her constructive dismissal claim, as her complaint in that regard is rooted in her other complaints. In the Proposed Protocol, the Claimant refers to what she describes as a small subset of claims potentially requiring limited oral evidence, namely arising out of telephone calls. She indicated a willingness to participate in a strictly time-limited hearing not exceeding 90 minutes in duration (inclusive of a 15-minute break I believe) at a venue within walking distance of her home, during which she would have no visual contact with the Respondent's representatives and written questions would be asked wherever possible. Her subsequent written case calls into question whether she remains committed to even that limited participation in a hearing. In any event, she has not identified the specific issues in the List of Issues that might be covered during a 90-minute hearing to enable me to evaluate the Tribunal's likely ability to hear the parties' evidence on those issues in the very limited time available.
44. Regrettably, I cannot see a way forward. I have listened carefully to what the Claimant has to say about the adjustments she believes she requires now and in the future. If it was simply a question of some inconvenience to the Tribunal, the Respondent, its witnesses, the alleged discriminators and other tribunal users, I would not allow this to stand in the way of the Claimant's access to justice. However, the matters I have identified above give rise to weighty considerations of substantive unfairness in a case involving upwards of 150 claims. In my judgement, these considerations materially outweigh the undoubted hardship, prejudice and unfairness to the Claimant of not having her claims adjudicated. I have decided in the circumstances that it is proportionate to strike out the claims in their entirety.

Approved by:
Employment Judge Tynan

Date: 24 March 2026

Sent to the parties on:

1 May 2026

For the Tribunal:

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