



EMPLOYMENT TRIBUNALS

Claimant: Caroline Page

Respondent: The Benjamin Foundation

RECORD OF A PRELIMINARY HEARING

Heard at: Bury St Edmunds (in public; by video) **On:** 4/3/2026

Before: Employment Judge Boyes (sitting alone)

Appearances

For the Claimant: Mr J. Hyland, solicitor

For the Respondent: Ms Ahari, counsel

JUDGMENT

The Respondent's application to strike out the Claimant's claims in reliance upon rule 38(1)(b), (c) and (d) of The Employment Tribunal Procedure Rules 2024 is refused.

REASONS

Background to the application

1. The Respondent has made an application to strike out the Claimant's claims on the 2/3/2026. The application was made in writing and the Claimant's representative was copied in. The grounds relied upon were that the manner in which the proceedings have been conducted by or on behalf of the claimant is unreasonable, that there had been non-compliance with orders of the Tribunal, and because the claim has not been actively pursued.
2. In its written application, the Respondent stated that its defence of the case is being severely prejudiced particularly given that many of the allegations in this case date back to 2023. Despite the claim having been made in August 2024, the issues in the case have yet to be satisfactorily clarified. It submitted that given that there has been no progress whatsoever in case preparations/non-

compliance with case management orders by the Claimant since the last preliminary hearing on 4/11/2025 (4 months prior), it is entirely appropriate that the Tribunal strike out the Claimant's claim. The Respondent stated that it has no confidence that there would be compliance with further case management orders for important matters such as disclosure or witness statements.

3. The Claimant initially provided further and better particulars, as previously ordered, on 18/8/2025.
4. On 4/11/2025, there was a case management hearing before Employment Judge Tynan. He ordered that the Claimant provide further information regarding her whistleblowing complaint, and her complaints under sections 15 and 26 of the Equality Act 2010, by 16/12/2025. The Claimant was also ordered to comply with previous orders of Employment Judge Laidler of the 2/11/2024 by 16/12/2025 (requiring that she provide medical evidence and a disability impact statement). The Claimant was ordered to provide an updated list of issues to the Respondent by the 3/2/2026 and a schedule of loss by the 17/2/2026.
5. The Claimant failed to comply with the orders with a deadline of 16/12/2025 and Employment Judge Laidler's previous orders. No attempt was made to explain the non-compliance or to seek an extension of time prior to the deadlines.
6. The Respondent wrote to the Claimant's representative on 7/1/2026 regarding the failure to comply with the Tribunal's orders and proposing a revised timetable. The Respondent subsequently applied to the Tribunal for an Unless Order on 13/1/2026.
7. The Claimant did not comply with the orders with deadlines of 3/2/2026 and 17/2/2026.
8. The Claimant's solicitors wrote to the Tribunal on the 3/3/2026 (the day before the hearing) at 6.33pm stating that the Claimant had now complied with the orders to provide an impact statement, further and better particulars and a schedule of loss. An earlier email also sent on 3/3/2026 was attached (sent at 1.28pm) forwarding the schedule of loss, disability impact statement and further and better particulars to the Respondent. The Claimant's solicitors stated that the preparation of these documents has been delayed due to the Christmas holidays, the Claimant's ill health around Christmas and the instructed solicitor needing additional time to comply with the orders due to the nature and complexity of the claim. The Claimant objected to the application to strike out, submitting that the orders had now been complied with and the Respondent had not been prejudiced by the delay due to the amount of time to the final hearing. It was submitted that the matter could be better dealt with via amended orders, rather than strike out.
9. At the hearing the Respondent submitted that the Claimant had still not fully complied with the orders made. She has still not provided her medical records or a draft list of issues. In addition, the further and better particulars provided

still did not provide some of the details previously ordered as the detriments were not particularised to the extent ordered. Ms Ahari submitted that there were 11 deficiencies in the particulars. She offered to take me through each of these to identify exactly why the Respondent says that the particulars are deficient. I indicated that whilst she could go through each one forensically (comparing each with what was originally pleaded and what Employment Judge Tynan had ordered), that the Respondent may struggle to persuade me that that was reason enough to strike out the claim. I indicated that it may also mean that any case management required could not be done at the hearing and a further hearing for case management was required. I made it clear that I was not preventing Ms Ahari from going through each of the 11 points forensically if she wished to do so. I indicated that the Respondent also had the option of withdrawing its application and then resubmitting it on an amended basis (see paragraph 24 below). Ms Ahari confirmed that the Respondent wished to proceed with its strike out application on the basis that it was pleaded.

10. Mr Hyland informed me that he already held some of the Claimant's medical records on file but these had not yet been sent to the Respondent.

11. Rule 38 of The Employment Tribunal Procedure Rules 2024 provides that:

The Tribunal may, on its own initiative or on the application of a party, strike out all or part of a claim, response or reply on any of the following grounds—

(1) The Tribunal may, on its own initiative or on the application of a party, strike out all or part of a claim, response or reply on any of the following grounds— [...]

(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;

(c) for non-compliance with any of these Rules or with an order of the Tribunal;

(d) that it has not been actively pursued; [...]

(2) A claim, response or reply may not be struck out unless the party advancing it has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

12. Establishing one of the specified grounds on which a response can be struck out is not in itself determinative of the application. A two-stage approach is required as confirmed in *Hasan v Tesco Stores Ltd* EAT 0098/16. The Tribunal must first decide whether one of the grounds has been made out and, if it is, must then decide whether to exercise its discretion and order strike out. Rule 38 gives the Tribunal the power to strike out, it does not mandate it to do so.

13. As per *Weir Valves and Controls (UK) Ltd v Armitage* 2004 ICR 371, EAT, when considering whether a claim should be struck out for non-compliance with the Tribunal rules or an order, the guiding consideration should be the overriding objective under rule 3. This requires a case to be dealt with fairly and justly. The

Tribunal should consider all the circumstances. This includes the magnitude of the default, whether the default is the responsibility of the solicitor or the party, what disruption, unfairness or prejudice has been caused, if a fair hearing is still possible and whether some lesser remedy would be an appropriate response to the disobedience.

14. In the case of *Otehtubi v Friends in St Helier EAT 0094/16*, the claimant had failed to comply with previous case management orders. In setting aside the Employment Tribunal's decision to strike out the claim, Mrs Justice Laing stressed that, because of the very severe consequences that flowed from a decision to strike out, the power should only be exercised on the clearest grounds and as a matter of last resort.
15. The substance of the Claimant's complaints arise from events that it is claimed occurred in 2023 and 2024. The claim was lodged with the Tribunal on 30/8/2024.
16. This case has a long and convoluted procedural history. I have not repeated all of the details of that here as it is recorded in earlier case management orders and correspondence from the Tribunal. However, I took into account the full procedural history of the case when reaching my decision on the Respondent's strike out application.
17. There does appear to have been an administrative error which resulted in Employment Judge Laidler's orders of 2/11/2024 not being sent to the parties until sometime after 6/1/2025 (see Employment Judge Warren's case management orders of 6/1/2025). I do not know when these were eventually provided to the parties. There has also been several adjournments of case management hearings. Therefore, it is not the case that all of the delay can be attributed to the Claimant's inaction.
18. It is the case however that the Claimant has failed to comply with Employment Judge Tynan's orders despite it being made clear at that hearing that it was essential that the case moved forward. That being so I am satisfied that the ground under rule 38(1) (c) has been made out by the Respondent, particularly as the Claimant had not yet filed her medical records as ordered nor had a draft list of issues been submitted. I did not consider that the Respondent had shown that the threshold had been met in respect of grounds under rule 38(1)(b) or (d) given that there has been some participation by the Claimant in the proceedings.
19. As a ground for strike out has been made out I was required to go on to consider whether I should exercise discretion to strike any or all of the complaints made.
20. I was not persuaded that the reasons given for the delay in complying between the 16/12/2025 and the 3/3/2026 were adequately explained by the Claimant and her representative. It is difficult to see how the Christmas break resulted in the inability to comply until 3/3/2026 and no medical evidence has been provided to demonstrate that the Claimant was unable to give instructions to her representative up until or subsequent to the 16/12/2025.

21. However, there has now been partial compliance by the Claimant. She has provided a disability impact statement, and schedule of loss. She has provided further and better particulars which provide some, but not all, of the information ordered. They are less than perfect but they go some way to provide the information ordered by Employment Judge Tynan.
22. The case is listed for a final hearing commencing on 14/7/2026. I considered that there was still time for the case to be ready for trial on that date and that the necessary preparation could be undertaken whilst maintaining fairness to both parties. I did not consider that this would cause procedural unfairness or prejudice to the Respondent in defending the claim. I considered that there could still be a fair hearing despite the Claimant's non-compliance.
23. I decided that it would be more proportionate, and less draconian than strike out, to deal with the Claimant's failure to comply by way of further case management. I considered this to be a proportionate way to deal with the case given its complexity and importance to the Claimant. Further case management orders were therefore made subsequent judgment and reasons being given orally. These orders have been provided separately.
24. During the course of the hearing, the Respondent indicated that it may instead make an application for strike out under rule 38(1)(a) on the basis that the claim is insufficiently particularised and so bound to fail. I did not consider this ground for strike out at the hearing because it had not been raised with the Claimant in advance of the hearing and I did not consider that it was possible to provide the Claimant with a reasonable and fair opportunity to respond in the time allotted for the hearing. However, for the avoidance of doubt, my Judgment on this strike out application does not prevent the Respondent from making an application for strike out under rule 38(1)(a).

Approved by:

Employment Judge Boyes

Date: 12/4/2026

Sent to the parties on:

13 May 2026

For the Tribunal Office:

Judgments and reasons for the Judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case.

Recording and Transcription

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