



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs G King

**Respondent:** The Secretary of State

**Heard at:** Bristol (by video – CVP) **On:** 8 May 2026

**Before:** Employment Judge Livesey

## Representation

**Claimant:** In person (by audio only)

**Respondent:** Mr Soni, /Mrs/Ms/Miss, solicitor/counsel

# JUDGMENT

The Claimant's claim is dismissed under rule 38 (1)(c) of the Tribunal Procedure Rules.

# REASONS

1. By a claim form that was issued on 12 June 2025, the Claimant brought claims for a redundancy payment, notice pay, unpaid holiday pay and unpaid wages. She had issued the claim against the Secretary of State and King Bros (Pimperne) Ltd, but the early conciliation provisions had not been complied with in respect of her former alleged employer and the claim was only accepted in respect of the Secretary of State.
2. The Claimant had approached the Insolvency Service on 24 April 2025. King Bros (Pimperne) Ltd was in Creditors' Voluntary Liquidation, with its winding up having commenced on 30 January 2025. She approached the Insolvency Service on 24 April, but her claim was rejected on 14 May on the basis that she was not considered to have been an employee. Employment status was required for any claims to have been brought under Part XII of the Employment Rights Act (s. 182).
3. The Tribunal issued a Standard Notice of Hearing on 28 November 2025 which provided the parties with the time and joining details for the final hearing. It also contained requirements for the filing of evidence, including witness statements.

4. The Claimant did not file a witness statement in accordance with the Notice and case management order, nor did she join the hearing at the allotted time.
5. The Tribunal telephoned her. She said that she was at work and had no intention of attending. She later joined the hearing by audio only (at approximately 10:20 am). She said that she had not understood that she needed to attend the hearing and/or file a witness statement, despite the Notice. The Judge found that surprising given the manner in which the document was worded.
6. It was clear that the hearing could not proceed in the absence of evidence from her, whilst she was at work, whilst on the telephone only and without her having the hearing bundle. She did not, however, apply for a postponement. Rather, she said, that she ought to 'just drop it.'
7. Mr Soni resisted the possibility of any further hearing in light of the wording of the Notice and the disproportionate effect of having a postponement, considering the amounts at stake.
8. The Claimant was in breach of the directions within the Notice of Hearing; she had not filed the witness statement, she did not have the hearing bundle with her and she had not attended the hearing as required, by video.
9. The Judge considered whether the claim ought to have been struck out under rule 38 (1)(c).
10. Striking out a case as a result of the behaviour of a party was undoubtedly a drastic sanction and it must have been proportionate response to the offence because it was a terminal ruling and the common law and article 6 required it (*Bharaj-v-Santander UK plc* [2023] EAT 152 and *Bennett-v-Southwark LBC* [2002] IRLR 407 and *Bolch-v-Chipman* [2004] IRLR 140).
11. The guiding principle was the overriding objective (rule 3); all the relevant factors had to be considered, including the prejudice caused by the conduct or breaches, whether the nuclear option of striking the case out was proportional, whether a lesser sanction would do and, critically, whether a fair trial was still possible. In *Emuemukoro-v-Croma Vigilant (Scotland) Ltd* UKEAT/0014/20/JOJ, Choudhury J stated that that test was not absolute; if a fair trial was not possible within the trial window listed, "*the power to strike-out is triggered*" (paragraph 18). The fairness of a trial also had to be assessed with regard to the parties' expenditure and the finite resources of the court (*Arrow Niminees-v-Blackledge* [200] WLR 775004 at paragraph 55). It might have been possible to have a fair trial if enough resources were deployed and the case took precedence over others in a list, but that would have been "*inconsistent with the notion of fairness generally*" (*Emuemukoro*, paragraph 19).
12. Nevertheless, even if those tests were met, it did not follow the claim *had* to have been struck out. A tribunal was always left with a discretion (the use of the word '*may*' at the start of rule 38) which had to be exercised in accordance with the guidance summarised above.
13. In this case, the evidence clearly showed, and the Claimant confirmed, that she had been the sole director and shareholder of the business when it

went into insolvency. When asked, in respect of her notice pay claim, who was supposed to have given her notice, she stated that it was her. Her status as an employee was going to have been extremely difficult to demonstrate. She relied upon a contract dated 3 November 2017 but which was very short (approximately half a page) and which was never going to have been determinative of her status given the relevant authorities in the area (*Buchan-v-Secretary of State for Employment* [1997] IRLR, 80, EAT, *Secretary of State for Trade and Industry-v-Bottrill* [1999] ICR 592, CA, *Clark-v-Clark Construction Initiatives Ltd* [2008] ICR 635, EAT and *Secretary of State-v-Neufeld and Howe* [2009] EWCA Civ 208). Further, the Claimant was only paid £250 per month. Her claims were small in value. Her wages claim was £44.64.

14. Accordingly, the Claimant was in clear default of tribunal directions and it was appropriate to exercise the discretion within rule 38 to strike out her claim because a further hearing was disproportionate in light of the claim's value and its likely chances of success. The Claimant herself did not appear particularly keen to pursue it further.

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Employment Judge Livesey  
Date: 8 May 2026

JUDGMENT SENT TO THE PARTIES ON  
31 May 2026

Jade Lobb  
FOR THE TRIBUNAL OFFICE

#### **Notes**

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>  
written record of the decision.