



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs H Sarohi-Parhar

v

Welwyn Hatfield Borough Council

Heard at: Watford (via CVP)

On: 22-23 April 2026

Before: Employment Judge Smeaton

Appearances

For the Claimant: Mr A Blay, legal representative

For the Respondent: Ms J Majithia, counsel

REASONS

Introduction

1. By judgment dated 27 April 2026, the Respondent's application to strike out the Claimant's claim was dismissed. The Claimant was ordered to pay a contribution to the Respondent's costs in the sum of £1,000 + VAT within 35 days of the date of the judgment. Full reasons for that judgment were given orally at the hearing on 23 April 2026.
2. On 6 May 2026, before the written judgment was sent to the parties, the Claimant applied under rule 60 of the Employment Tribunal Procedure Rules 2024 ('the 2024 Procedure Rules') for full written reasons.

The hearing

3. The case was listed on 22-23 April 2026 for a full merits hearing. It was agreed between the parties, however, that the full merits hearing could not be effective because the matter was not ready to proceed. The parties invited the Tribunal to convert the hearing to an open preliminary hearing in order to determine the Respondent's application to strike out the Claimant's claim.
4. The Claimant was represented at the hearing before me by Mr Blay and the Respondent was represented by Ms Majithia. The hearing took place via CVP, for the reasons set out below.

5. I was provided with a bundle of documents from the Respondent comprising 109 pages, a separate bundle for the Claimant comprising 95 pages and two skeleton arguments, one from Mr Blay and one from Ms Majithia.
6. I heard evidence from the Claimant and submissions from both parties. I have had regard to all of the documents and evidence before me in making my decision, as well as to the oral submissions made by both representatives.
7. At the end of the second day of the hearing, I gave an oral judgment, with full reasons, dismissing the Respondent's application for strike out of the claim but making an order for the Claimant to pay a contribution towards the Respondent's costs. I also made various case management orders which are the subject of a separate order.

Background

8. The Claimant was employed by the Respondent as a Housing Development and Strategy Services manager from 10 November 2020 (on her case) or 23 November 2020 (on the Respondent's case). The start date of her employment is immaterial for the purpose of these written reasons. The claim form, which ticked the boxes for claims of race and disability discrimination, was presented on 15 April 2024.
9. On 17 June 2024, the Claimant resigned from her employment with immediate effect.
10. On 28 August 2025, the Claimant made an application to amend her claim to include claims of constructive unfair dismissal, victimisation and whistleblowing.
11. The final hearing was first listed to be heard over three days between 8 and 10 September 2025. The Claimant made an application to postpone that hearing, which was refused, although ultimately the hearing was postponed due to a lack of judicial availability.
12. A Case Management Preliminary Hearing took place before Employment Judge ('EJ') Davison on 12 December 2025. Both parties were represented at that hearing as they were before me.
13. EJ Davison refused the Claimant's application to amend her claim to include claims of constructive unfair dismissal, victimisation and whistleblowing. Full reasons for that decision were sent to the parties on 9 January 2026. The Claimant did not apply for reconsideration of that judgment and did not seek to appeal it.
14. It was accepted by both representatives at that hearing that the disability and race discrimination claims needed to be further clarified (paragraph 5 of the Case Management Order ('CMO')). EJ Davison ordered the Claimant to write to the Tribunal and the Respondent by 30 January 2026 with the further information highlighted in the list of issues. Within the CMO, he made clear that any additional information must link back to the ET1 and that no new claims should be

advanced. He also made clear within his CMO that the information was necessary for the hearing in April 2026 (the full merits hearing) to be effective.

15. The claims were identified by EJ Davison as claims of direct race and disability discrimination (s.13 EqA 2010) and discrimination arising from disability (s.15 EqA 2010). The Claimant was ordered to provide:
 - (a) For the claim under s.13 EqA 2010:
 - i. the acts or omissions of the Respondent said to be race and/or disability discrimination; and
 - ii. the names of any comparators.
 - (b) For the claim under s.15 EqA 2010:
 - i. the acts or omissions of the Respondent said to amount to unfavourable treatment; and
 - ii. the 'things' said to arise in consequence of the Claimant's disability.
16. The CMO of EJ Davison was clear. The Claimant, whether represented or not, ought to have understood what she was required to do to comply with EJ Davison's order.
17. On 27 January 2026, the Claimant lodged a schedule of loss. Notwithstanding EJ Davison's judgment refusing the Claimant's application to amend, that schedule of loss referred to claims for automatic unfair dismissal and constructive unfair dismissal (as well as claims for disability discrimination). No reference was made to a claim for race discrimination.
18. On 30 January 2026, the Claimant emailed the Respondent's representative requesting a number of documents. General disclosure was not due until 20 February 2026. The Respondent had, however, been ordered by EJ Davison to disclose to the Claimant by 9 January 2026, any emails within its possession concerning the Howland's House consultation between herself and four named individuals between 1 September 2023 and 30 November 2023. Mr Blay maintained at the hearing before me that the Respondent did not comply with that order. He stated that, when he wrote to the Respondent's representative seeking, amongst various other documents, all communications involving the CEO with Geoff Sampson and Joyce Guthrie, the Respondent's solicitor responded to indicate that it had no relevant documents to disclose.
19. The Claimant did not make a further application to the Tribunal challenging the response from the Respondent on the disclosure issue. I was not taken to any evidence which might suggest that the Respondent's response on the matter was wrong or that the Respondent had failed to comply with its disclosure obligations.
20. The Claimant did not comply with EJ Davison's order. She did not provide the information outlined above. On 29 January 2026, the Claimant sent what she referred to as a 'Disability Assessment bundle'. This appeared to be provided in response to EJ Davison's order for details of the impairment relied on, its effects

and medical evidence necessary for the Respondent to determine whether or not it admits that the Claimant is disabled within the meaning of s.6 EqA 2010.

21. Upon discussion during this hearing, it became clear that Mr Blay also relied on information contained within that bundle to comply with the order for further information of the allegations of discrimination. That was not at all clear from the covering email. It is only when the 'disability impact assessment' is read in full that some of the necessary further information can be extracted. That is not an appropriate or acceptable way to comply with an order for further information.
22. On 11 March 2026, the Respondent chased the Claimant for the outstanding missing information. As an aside, it is not entirely clear to me why it waited so long to do so. Although I acknowledge that it is not the responsibility of the Respondent to chase, particularly in a case where the Claimant is legally represented, I would have expected a represented party to query the failure to comply earlier, particularly given the proximity of the full merits hearing.
23. On 12 March 2026, Mr Blay responded to the Respondent asking what information was being requested. That is notwithstanding that the outstanding information had already been made clear in EJ Davison's order. Again, as an aside, it is not clear to me why the Respondent did not respond to Mr Blay to refer him back to EJ Davison's order. Again, whilst not its responsibility to do so, it would not have been a difficult or onerous step to take (although, in the circumstances, I do not think it would have made any difference given how difficult it was to identify the missing information at this hearing).
24. On 30 March 2026, the Respondent applied to strike out the Claimant's claim under rule 38(1)(b) of the 2024 Procedure Rules (unreasonable conduct) and/or rule 38(1)(c) of the 2024 Procedure Rules (failure to comply with an order of the Tribunal). That application ought to have prompted Mr Blay and the Claimant to revisit EJ Davison's CMO and remind themselves of what missing information was required.
25. Instead of providing that information, on 30 March 2026, the Claimant submitted a document titled 're-organised claim' and a proposed list of issues. Those documents referred to a claim of unfair dismissal, which is not a claim the Claimant has permission to pursue, and a claim of race discrimination. The document is very difficult to follow but it clearly does not identify a claim of disability discrimination. The references to the Claimant's disability were said to be matters relevant to context and the fairness of the alleged dismissal only.
26. The documents were not sufficient to comply with the order of EJ Davison. Indeed, they confused matters further. They were submitted two months after the deadline for compliance and failed to particularise the complaints. Two allegations of race discrimination were identified in the list of issues, both in broad and vague terms. The information was not sufficient to allow the Respondent to understand the case it has to meet.
27. On 8 April 2026, the Respondent added to its application to strike out, noting that although the Claimant had now provided further information, she had still not

provided the missing information ordered by EJ Davison and, further, had provided details of claims that she does not have permission to pursue.

28. The hearing came before me listed for a full merits hearing. On the morning of the hearing, it was converted to a CVP hearing. That application, which was ultimately granted on the basis of the Claimant's health, was not made in good time. The Claimant had indicated in her pre-trial questionnaire, filed in March 2026, that she would prefer a hearing via CVP, but gave no indication that that was for health reasons.
29. The application to convert the hearing was not made until 8 April 2026. No reference was made to the Claimant's health in that application. The application was refused by EJ Hawksworth sitting as the Acting Regional Judge on 21 April 2026 on the basis that insufficient grounds had been identified to justify converting the hearing. In response, Mr Blay sent an email indicating that the application was in fact being made on the basis of the Claimant's health. EJ Hawksworth ordered the Claimant to file any medical evidence in support of that application. The Claimant's disability impact statement and some medical evidence, albeit not contemporaneous evidence, was filed shortly thereafter.
30. The matter was referred to me just after 4pm on the afternoon of 21 April 2026. By the time I was able to consider the documents and make a decision, it was after close of business. The parties were therefore only informed that they could attend by CVP, if they so wished, early on the morning of the hearing. The manner in which the application was made caused unnecessary work for the Tribunal administration. As I explained at the outset of the hearing to Mr Blay, if an application is to be made on medical grounds, it should be done as soon as possible. There was no justification for the timing of this application.
31. I make clear that I have not taken my criticisms above concerning the application to convert the hearing into account when making my decision on the strike out application or on costs.
32. The parties agreed at the outset of the hearing that there was no prospect of the final hearing being effective. The issues had still not been identified and, accordingly, the final bundle had not been agreed and the witness statements had not been finalised.
33. The parties confirmed that the matters before me were:
 - (1) Should the Claimant's claim be struck out on the basis of unreasonable conduct and/or failure to comply with an order of the Tribunal?
 - (2) If not, what case management orders (including a potential order for costs) should be made?
34. A great deal of time during the first day of the hearing was spent attempting to identify the missing information as ordered to be provided by EJ Davison so that a final list of issues could be determined. That required me to explain to the Claimant directly the different types of disability discrimination claims that can be brought. This exercise could and should have taken place already between the Claimant and her representative.

35. Having conducted that exercise, I sent a list of issues to the representatives identifying the claims the Claimant wished to pursue as I understood them. Those claims were limited to two allegations of direct race discrimination and two allegations of failure to make reasonable adjustments. Mr Blay confirmed that the list of issues was an accurate reflection of the claims the Claimant intended to bring and that nothing had been missed.
36. The two allegations of direct race discrimination were as follows:
- 36.1. Following an incident on 13 October 2023, at which the Claimant was the subject of racial abuse by members of the public, the Respondent failed to investigate or take action against those responsible.
- 36.2. From 20 November 2023, the Claimant was subjected to a lengthy investigation into her work on the Minister House project.
37. The Claimant said that that was less favourable treatment because of race. She relied on a hypothetical comparator only for each allegation.
38. I accept Ms Majithia's submission that neither of those allegations are contained within the ET1. There is nothing in the grounds of claim which suggest that the Claimant believed she had been treated as now alleged because of her race. Other than ticking the box for race discrimination, and complaining about being racially abused by members of the public in October 2023, there is no reference to her race at all.
39. There was no application to amend the claim before me. Had the claim been properly particularised on 30 January 2026, as ordered, it may have been possible for such an application to be made and addressed in time for the final hearing to be effective. Any such application would, however, be significantly out of time and likely to fail for much the same reasons given by EJ Davison in his December 2025 judgment.
40. That means that in fact there are only two allegations of discrimination currently pleaded, both of a failure to make reasonable adjustments. They are as follows:
- 40.1. From November 2023, the Respondent had a requirement that the Claimant attend the council offices to gather evidence in support of her defence to the investigation on specific dates and for time limited periods, during which she was not permitted to photocopy documents and take them home.
- 40.2. From November 2023, the Respondent had a requirement to participate in an investigation process.
41. The Claimant alleges that the PCPs put her at a substantial disadvantage compared to someone without the Claimant's disability, in that:
- 41.1. For PCP1, the Claimant was not always well enough, or mobile enough, to attend the offices on the dates and time specified and to gather and retain the information.
- 41.2. For PCP2, the process exacerbated the Claimant's disability.

42. I do not accept Ms Majithia's submission that those two allegations are not pleaded in the original claims. The factual matrix is set out in the claim form, as is the necessary causative link with the Claimant's disability. The fact that it was not clear until the first day of the hearing whether the Claimant was in fact pursuing those claims as allegations of s.20/21, particularly given that no reference was made at the hearing before EJ Davison to a claim of s.20/21, does not detract from that.
43. I have considered the strike out application on the basis that the claim before the Tribunal is those two allegations of failure to make reasonable adjustments only.
44. I will not rehearse each party's submissions on the strike out in full but will provide a brief summary.
45. Ms Majithia focused her application on rule 38(1)(c) (failure to comply) rather than rule 38(1)(b) (unreasonable conduct). That was appropriate. She submitted that there had clearly been non-compliance with the order of EJ Davison because the Claimant had failed to provide the missing information ordered. She maintained that that non-compliance was significant because, without that information, the Respondent could not understand the claim it had to meet. She invited me to exercise my discretion to strike out the Claimant's claim on the basis that a fair trial is no longer possible within this window (that much is not in dispute) and that the prejudice to the Respondent of the Claimant's non-compliance is significant. The Respondent has been unable to draft a proper response or draft witness statements.
46. She noted that, in his judgment refusing the application to amend, EJ Davison had already noted that if this listing was lost the matter would not be heard for many months. Three of the four witnesses the Respondent intends to call to answer the now identified claims no longer work for the Respondent and there is difficulty in accessing their emails.
47. Mr Blay denied that there had been non-compliance (or indeed unreasonable conduct). Initially, he indicated that the Respondent had failed itself to comply with the order of EJ Davison (at paragraph 9) to disclose emails in their possession by 9 January 2026. He appeared to be suggesting that the Claimant needed information within those emails to provide the missing information. He was unable to explain why and, indeed, was ultimately able to articulate the claims with my assistance notwithstanding that the Respondent has not disclosed any emails as requested.
48. For completeness, I do not accept that there has been material non-compliance with EJ Davison's order by the Respondent, as alleged. The Respondent's representative has indicated that it has no relevant emails to disclose. The Claimant has not identified any basis upon which I could go behind that position.
49. Mr Blay reiterated his position that the Claimant had complied with the order by providing further and better particulars. When I asked him to take me to the emails or documents where the missing information was provided, he said that the Claimant's claim had already been adequately particularised in documents sent to the Respondent before the hearing before EJ Davison. I was not taken to any such documents and, in any event, that submission is illogical. The Claimant was unable

to identify the information at the hearing before EJ Davison. If she had been able to do so, the information would not be missing and there would have been no need for EJ Davison's order.

50. Mr Blay also maintained that the missing information was identified within the Disability Assessment bundle, as explained above. Whilst it was possible for me to extract some of the necessary information from that bundle, it does not go far enough to comply with the order of EJ Davison. It is not the role of the Respondent or the Tribunal to comb through documents submitted in respect of one issue (namely establishing disability under s.6 EqA 2010) to find information necessary for another issue (identifying the claims).

The law

51. In considering an application for strike out, I must adopt a two-stage approach as set out in *Hasan v Tesco Stores Ltd* EAT 0098/16. I must first decide whether any of the grounds in rule 38(1)(a)-(e) of the 2024 Procedure Rules are established.
52. For applications based on unreasonable conduct, I must be satisfied that the conduct involved deliberate and persistent disregard to required procedural steps. The reference to the conduct being deliberate likely excludes mere oversight or negligence which is not the result of any intentional or deliberate failure to implement proper systems for managing case progress - *Emuemukoro v Croma Vigilant (Scotland) Ltd* 2022 ICR 327, EAT.
53. If satisfied that either or both of those grounds are established, that does not mean the claim must be struck out. Instead, I must go onto consider whether to exercise my discretion to strike out.
54. The power to strike out must be exercised in accordance with the overriding objective to act fairly, justly and proportionately.
55. For non-compliance cases, that involves considering the magnitude of the non-compliance, whether the default was the responsibility of the Claimant or her representative and what disruption, unfairness or prejudice has been caused.
56. The key question, under both grounds, involves considering whether a fair trial is still possible (*De Keyser Ltd v Wilson* 2001 IRLR 324, EAT). Save in exceptional cases, strike out is not intended as a punishment.
57. However, the question of whether a fair trial is possible does not need to be determined in absolute terms. Where party's unreasonable conduct has resulted in a fair trial not being possible within the allocated window, the power to strike out is triggered and whether the power ought to be exercised depends on whether it is proportionate to do so (*Emuemukoro v Croma Vigilant (Scotland) Ltd*).
58. Where there has been, or is likely to be, a significant delay in proceedings, the passage of time may itself result in serious prejudice to the ability of a respondent fairly to defend itself, whether because important witnesses or documentary evidence are no longer available, or because of the impact of the passage of time

on the ability of witnesses to recall events (*Boateng v Moss Bros Group Limited* [2026] EAT 50).

59. The appropriate approach to the fair-trial issue is highly fact-sensitive and will depend upon the particular nature of the problem, and circumstances of the case, whichever particular sub-paragraph or sub-paragraphs of the rule are being invoked.

Findings and conclusions

60. I am entirely satisfied that the Claimant has failed to comply with an order of the Tribunal. The missing information was not identified clearly until the hearing before me, nearly three months after it was due, and only after I had looked across a number of different documents to identify the claims and taken a proactive role in assisting the Claimant.
61. In the circumstances, it is not necessary for me to consider whether there has been unreasonable conduct at this stage.
62. I therefore turn to consider whether I ought to exercise my discretion to strike out the claim or whether a less draconian step is more proportionate.
63. The non-compliance is significant. The Claimant was given a second opportunity by EJ Davison to properly identify her claims, having failed to do so clearly in the claim form. Without that identification of the claims, the Respondent could not know the case it had to meet. It is not the role of the Respondent to look through various documents and seek to identify what claims the Claimant might be bringing. Particularly in a case where the Claimant is represented, as she has been here for some time, it is for the Claimant to do so.
64. It is not entirely clear to me whether the fault is that of the Claimant or her representative. The documents submitted on her behalf were difficult to follow, contradictory and confusing but I also note that EJ Davison's order was set out clearly and is easy to follow, so there is no reason why the Claimant could not have provided her representative with the information missing. In the circumstances, I consider that the fault is likely that of both the Claimant and her representative.
65. The disruption caused to the Respondent is significant. The hearing was listed (for a second time) for a full merits hearing this week. As a result of the non-compliance, it cannot proceed. Mr Blay disputed that the fault for that lay with the Claimant. He maintained that, if the Respondent had co-operated with him, the bundle and statements could have been agreed in time. That submission overlooks the important, first step in any claim of identifying the claim and issues. The bundle and statements cannot be agreed if the issues have not been identified.
66. The result of the non-compliance is plainly that a fair trial is not possible in the allocated window. Both parties agree that the hearing cannot proceed.
67. The question remains, however, whether a fair trial is possible within a reasonable time.

68. The issues have now been identified and the Respondent understands the limited case that it has to meet. Much of the disclosure has been done. I do not anticipate that it will take much time to get this case ready for a final hearing.
69. On the basis of the much reduced list of issues, I consider that the matter could be dealt with in four days, even taking into account that a finding on disability may need to be made as part of that hearing. Given the limited nature of the allegations, it is unlikely to be necessary for the Respondent to call all four of the witnesses it identified yesterday. I can see no reason why more than one or two witnesses would be required. Equally, the Claimant does not need to call two witnesses. I was told that Mr Wright worked closely with the Claimant and was at the event on 13 October 2023. Given that the Claimant's capability and the events on 13 October 2023 are not matters the Tribunal needs to determine, I do not think his evidence is relevant. Ms Jack, the Claimant's union representative who attended the disciplinary hearing, may be able to give relevant evidence, but I anticipate it would be limited.
70. A four-day listing can be accommodated on 12-15 January 2027. Both parties have confirmed that they can be available on those dates. A longer listing could not be accommodated before October 2028. The hearing will be via CVP and can be heard before a full panel, if required.
71. The parties will need to be concise and well-prepared to make that listing work. The hearing will be tightly timetabled.
72. Although three out of the four witnesses the Respondent would have liked to call have now left the organisation, there is nothing before me to suggest that they are not willing to co-operate with the Respondent. I can accept that they might be reluctant to assist the Respondent after a lengthy period of time, but I cannot make a finding that they will be unwilling to do so.
73. If they are so unwilling, the Respondent has the option to apply for witness orders. I acknowledge that witness orders are a poor substitute for a willing witness, but they do act so as to mitigate against the risk of an unfair trial. In any event, as I set above, I do not think it is likely to be necessary for the Respondent to call all four of those witnesses.
74. The witnesses will be asked to give evidence about matters which occurred approximately three and a half years ago. Again, that is not ideal but is not such a long period of delay that memories will inevitably be impacted to the extent that a fair trial is no longer possible.
75. The Claimant did lodge a grievance, which was investigated by the Respondent, and says that she sent emails to HR raising concerns about the impact of the process on her health. The fact that there is likely to be some contemporaneous documentary evidence again mitigates against the risk of an unfair trial.
76. Where the Respondent faces difficulties in its witness or other evidence, it will be open to it to refer to the procedural history in this claim and the passage of time during its submissions. The Tribunal will take into account, when assessing

credibility, the passage of time and the ability of the Respondent to answer the claims given how late they were identified.

77. Taking all of the relevant factors into consider, I consider that a fair trial remains possible within a reasonable period of time and, accordingly, that it is not proportionate to exercise my discretion to strike out.
78. That means that the case will proceed to a final hearing on the basis of the two allegations of failure to make reasonable adjustments only.
79. In making that order, I make clear to the Claimant that any further delay compromising the effectiveness of the next hearing may result in a further application for strike out being made, and being successful.

Costs

80. I am also satisfied that it is appropriate to make an order for costs by way of compensation to the Respondent, not punishment to the Claimant, under rule 74(1) of the 2024 Procedure Rules.
81. I must first consider whether one of the grounds for making a costs order is met. If it is, I must consider whether to exercise my discretion to award costs. Finally, I must determine the amount of any award.
82. I am entirely satisfied that a ground for making costs (rule 74(1)) is made out. There has been unreasonable conduct by the Claimant or her representative. The Claimant has been given a number of opportunities to provide details of her complaints and failed to do so in compliance with the ET's orders (see *Kaur v John L Brierly Ltd* EAT 783/00).
83. I am satisfied that it is appropriate to exercise my discretion to award costs. I acknowledge that costs are the exception rather than the rule and compensatory nor punitive. The Claimant has been represented throughout and the task she was ordered to carry out, which she failed to do, was not onerous. The unreasonable conduct resulted in the hearing being adjourned. The Respondent has been put to cost of instructing counsel and incurring the cost of her brief fee and one day's refresher in excess of £3,500 pounds. The Respondent is a local authority, with limited means, and is accountable to the public for the use of its funds.
84. I have taken the Claimant's means into account in considering the amount of the costs order. The Claimant does not have stable employment. She is working on a zero hours contract, earning £300 per day when work is offered to her. She noted that she is not paid sick pay or holiday pay and that work is no guaranteed going forwards. She has, however, worked five days a week for at least the past two months, earning approximately £6,000 a month and under her current assignment has the right to seven days' notice which has not been given. Her outgoings are approximately £2,890 per month. On the figures I have been provided, she has been receiving more than her outgoings for the last two months.
85. Taking all factors into account, and acknowledging that ongoing work is not guaranteed, I order the Claimant to make a contribution towards the Respondent's

costs of this hearing in the sum of £1,000 + VAT. The Claimant will have 35 days from the sending of the order to make that payment.

Approved by:

Employment Judge Smeaton

Date: 22 May 2026

Sent to the parties on: 3 June 2026.....

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For the Tribunal Office

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