



EMPLOYMENT TRIBUNALS (SCOTLAND)

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL IN CASE NO. 8000903/2025,
ISSUED FOLLOWING OPEN PRELIMINARY HEARING HELD AT EDINBURGH
VIA THE CLOUD BASED VIDEO PLATFORM ON 21 APRIL 2026**

Employment Judge: J G d’Inverno

J Holland

**Claimant
In Person**

Enigmatic Smile Limited

**Respondent
Represented by
Mr Briggs,
Counsel**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is:

(First) That the claimant’s application for strike-out of the response is refused;

(Second) That the respondent’s application for strike-out of the claim is refused, at this juncture in proceedings;

(Third) That the Tribunal’s Orders 13 and 16 of 16 January 2026 be varied by substitution therefore of the following Order:-

“13 Orders parties to liaise regarding the exchange of documents and to exchange documents restricted to those relevant and necessary to the determination of the issues before the Tribunal for determination at the Final Hearing set down to proceed in

the case at Glasgow in person on 15, 16 and 17 June 2026;
and;

- 16 Orders that the respondent's representative to compile and intimate to the claimant (and to lodge with the Tribunal in both electronic and paper form together with sufficient copies for the Tribunal's use), a Joint Bundle of Documents to be referred to at the Final Hearing in accordance with the following timetable:-
- a. By 4pm on 25 May 2026 the respondent's representative to send to the claimant a list of the documents which are to be included in the Joint Bundle on the respondent's behalf;
 - b. By 4pm on 28 May 2026 the claimant to send to the respondent, copies of any additional documents (that is to say documents not already identified on the respondent's list) which the claimant wishes included in the bundle;
 - c. By 4pm on 04 June 2026 the Joint Bundle, in its then anticipated final form, to be in the possession of both parties for hearing preparation purposes;
 - d. The Tribunal copy Bundles to be lodged with the Tribunal no later than 4pm on 9 June 2026."

(Fourth) That the claimant's applications for Unless Orders is refused;

(Fifth) That the Respondent's is Ordered to draw up, intimate to the claimant and to lodge with the Tribunal for its consideration, adjustment and recording, "a Final List of Issues" in the case, by 4 pm on the 01 June 2026, and being

- a. restricted to those issues arising under the relevant sections of the Equality Act 2010 and Employment Rights Act 1996 in which the Tribunal's jurisdiction to consider the claims as set out in the initiating application ET1 is constituted;
- b. the same include full specification of all relevant statutory provisions (sections and sub-sections/paragraphs and sub-paragraphs of relevant primary and secondary legislation, together with,
- c. an articulation of any subsisting preliminary issues which require determination at the Final Hearing after the evidence has been heard.

(Sixth) Continues the case to the Final Hearing set down to proceed at Glasgow and commencing at 10am on 15, 16 and 17 June 2026.

J G d’Inverno

Employment Judge

05/05/2026

Date

21/05/2026

Date sent to Parties

REASONS

1. This case called for Open Preliminary Hearing at Edinburgh, via the Cloud Based Video Platform on 21 April 2026, further to Employment Judge O’Donnell’ Direction of 2 April 2026.
2. In terms of that Direction and under the notice of hearing subsequently issued to parties, the hearing was set down to proceed on 21 April with a time allocation of 1 day for the purposes of allowing the parties to be heard in support of and in opposition to their respective applications being:-
 - a. The claimant’s application for strike-out of the response dated 3 March 2026;
 - b. The respondent’s application for strike-out of the claim dated 13 February 2026.
3. Parties placed before the Tribunal a Joint Hearing Bundle and a Supplementary Bundle which the claimant confirmed substantially contained additional documents lodged by him.
4. The Hearing Bundle contained a transcript of a recording which the claimant had made and which the claimant confirmed was an accurate transcription of what was said in the recording. Shortly before 21 April the claimant had raised an issue regarding the fact that whereas the respondent had included in the Joint Bundle his transcript of the recording they had not included the video tape itself. There was accordingly before the Tribunal, at Hearing, a

preliminary issue in terms of which the claimant, for his part, sought to have the Tribunal watch and listen to the recording in addition to having access to the transcription and the respondent, for its part, objected to so doing on the ground:-

- a. That whatever may be said as to the relevance of either the recording or the transcript at a final evidential hearing on the merits of the claimant's complaint, it was not relevant to the matters before the Tribunal at Open Preliminary Hearing namely, the determination of the parties' respective applications for strike-out; and,
 - b. Given the time allocation of one day only to the hearing, requiring the Tribunal to watch a video recording where there was in the bundle an accurate transcript would not constitute an efficient use of the allocated time.
5. In response to the Tribunal's enquiry the claimant confirmed that the video recording was 35 minutes in length.
6. The Tribunal could not be satisfied at the outset of the hearing as to the relevance of either the transcript or the video recording to the issues before the Tribunal for determination at Open Preliminary Hearing, nor as to whether it was necessary to the determination of those that the video recording be watched as opposed to the Tribunal being referred to the transcript as appropriate by parties in the course of submission. The Tribunal accordingly declined to watch the video recording at the outset of the hearing advising parties that if, in the course of parties making of their submissions, the requirement was again focussed the Tribunal would give consideration at that point as to whether particular segments of the recording identified by reference to the transcript should relevantly and or necessarily be viewed and would hear parties anent any such application as and when it arose.
7. In the event, in the course of making his submissions, the claimant confirmed that the relevance of the Tribunal watching the video was that the Tribunal's determination of whether the disclosure made by him was a protected disclosure was something that would be informed by listening to/watching the video recording, albeit that the transcript produced was accurate. That issue, not being an issue before the Tribunal for determination at Open Preliminary Hearing, the Tribunal was ultimately satisfied that no requirement to watch the video arose and that the devoting of an additional 35 minutes to doing so would not be proportionate in circumstances where that might result in insufficient time being available for parties to make the submissions that they wished to make.

Timetabling

8. In the course of case management discussion conducted at the outset of the hearing the Tribunal confirmed with parties the following timetabling and order of submissions:-
- The claimant in support of his application for strike-out of the response (1 Hour);
 - The respondent in opposition to the claimant's application for strike-out (1 Hour);
 - The claimant in exercise of a limited right of reply (15 minutes)
 - The respondent's representative in support of the respondent's application for strike-out of the claim (1 Hour);
 - The claimant in opposition to the respondent's application for strike-out of the claim (1 Hour);
 - The respondent's representative in exercise of a limited right of reply (15 minutes).
9. There was before the Tribunal each of party's respective written applications for strike-out; in the case of the claimant dated 3 March and, in the case of the respondent, dated 13 February 2026.
10. The Tribunal confirmed that in determining the applications it would do so on the basis of and would take into account, the terms of each parties' written application together with the oral submissions made by them at Hearing.

Submissions of the parties in Applications for Strike-Out respectively of the Response and of the Claim heard at Edinburgh via the Cloud Based Video Platform on 21 April 2026 in Case No. 8000903/2025

11. It is not the function of the Tribunal to record verbatim the submissions made by parties but rather to summarise them. Notwithstanding, with a view to doing justice to the case which the claimant seeks to present, the Tribunal, exceptionally sets out below the entirety of the oral submissions made by the claimant at the Hearing, as noted by the Judge.
12. [The words which appear in square brackets are comment of the Tribunal and are not words spoken by either the claimant or the respondent's representative respectively]

Submissions for the claimant in support of the claimant's application for strike-out of the Response

13. *Under reference to his written application for strike-out dated 3 March 2026 the claimant orally submitted as follows:-*
14. *"The respondent has serious credibility issues.*
15. *Faheed Malood is the head of legal for Connect.*
16. *The respondent is offering and giving financial advice in support of an investment scheme without financial authority or regulatory approval.*
17. *So their entire submission is based upon an investigation which was supposed to be done in good faith.*
18. *So I call into question their credibility.*
19. *The interest rate promised on the promoted investment is impossibly high. So the interest was a 1% a day for 150 days. So if you start with £10,000 and repeat that process 25 times as instructed by Mr Bashir the process can be repeated endlessly, after 10 years it would be 8.8 trillion pounds Sterling.*
20. *By comparison there is 6.7 billion dollars in the US federal reserve so Bishsmeir is telling Germans on the internet that he can make them richer than the US central reserve.*
21. *At paper page number 229 in the Joint Bundle - was I accurate in describing the promotion as a Ponzi Scheme, the scheme which is marketed is a Ponzi Scheme. This is a Ponzi Scheme so see the Oxford English Dictionary definition of a Ponzi Scheme at paper number page 229:-*
22. *"A plan for making money" Bishsmeir says in the promotional video that the scheme is about making money.*
23. *In slide 10 and 11 of the promotional video, which is not in the bundle, there are bonuses if you reach certain targets and 'levels of influence'. What is offered is a high interest rate of 1% per day for a 150 days. It is high compared to the maximum rate allowed by law for a payday loan which is 0.8% per day.*
24. *This comparison is made by me in my most recent whistleblowing email.*
25. *The last point of the definition of a Ponzi Scheme is that it is a scheme in which there are not enough new investors people who have recently invested lose money.*

26. *The CEO Bishsmeir states that 'VOW' has the ability to print money' and that is why it is different from other programmes. Other programmes run out of money when paying "commissions". VOW can make money (at 6 minutes 45 seconds into the promotional video).*
27. *At 38.1 minutes into the promotional video it is unlikely that VOW can make money otherwise Vish would not be promoting this scheme to Germans in order to get them to invest their money.*
28. *Given the sale product Enigmatic Smile the cashback apps no longer work since 'TILLO' functionality stopped.*
29. *It's not realistic that Vish could pay the return promised as well as paying the business costs of Enigmatic Smile's in 150 days.*
30. *Enigmatic Smiles appears to be in financial difficulty. They are failing to fulfill obligations to 'Block incorporated', struggling to pay staff on time, and having to lay off a substantial part of their workforce.*
31. *The claimant cannot have a fair hearing against a respondent that is engaged in operating a Ponzi Scheme.*
32. *Ponzi Schemes are deceptive by their very nature and the respondent's online position is based upon an investigation which was supposed to be carried out in good faith.*
33. *The respondent's position is now untenable because their credibility is reduced to zero and the respondent's ET3 should be struck out and the claim should proceed as undefended as per Rule 38.1(c), as it is not possible for a fair hearing to be held. In the respondent's strike-out application....Give me a moment. It meets the definition of a Ponzi Scheme. The claimant is accurate in describing it as a Ponzi Scheme as at 11 February 2026 the respondent had not complied with Judge Whitcombe's Order made on 16 January 2026 at paragraph 13 –*

"13. By no later than 13 February 2026, the parties must send to each other:

- a. The documents in which they intend to rely at the hearing; and***
- b. Any documents properly requested by the other party.***

16. The Joint set of documents must be sent to all parties and to the Tribunal by no later than 27 February 2026."

34. *"The respondent waited until 13 February 2026, the first deadline then filed a vexatious and scandalous strike-out application based on a second whistleblowing e-mail I sent on 11 February and asking for the 27 January*

Orders to be varied until after the strike-out application had been determined. That application was made by them in response to the e-mail which I sent [to a number of addressees] “on February 11, page numbers 26-31”; [sent on 11 February 2026 at 16.33 to the respondent’s CEO and; Onkar Wadekar; Rasheeda Akinjobi, Rebecca Newton, Stefan Skarvinski, Stefan Sreckovic, Subash Manuel, David Hastie, Peter Cockcroft, Barry Helfrich, Chade Carter, Shawn Frazer, Sandra Tobon Osorio, Faheen Mahmood, Jamie Sefton, Jessica Kelkenberg, John Cohen, Matthew Gallagher, Paul Teleky, Lydia Doci with the subject heading ‘Bish and co-conspirators are still running their pyramid scheme’] ‘it (the email) attached a promotional video and a meme of the ‘wait it’s all’ format showing an astronaut about to be shot on the moon’ the respondent company is a front for a Ponzi Scheme and so the e-mail is a protected disclosure and the meme is legally protected in law.” [from paragraph 7(c)(ii) of the claimant’s written application for strike-out – ‘the meme quite explicitly re-iterates, in a graphical format, the point I raised in my first whistleblowing e-mail, that the company is a front for a pyramid scheme and implicates a list of 15 people that are complicit in the operation of the GLN Ponzi/Pyramid Scheme’ and [from paragraph 7(c)(iii) of the claimant’s written application] ‘this meme is legally protected under law because it gives the employees the information they need to start doing their own research on the names mentioned’ [from paragraph 7(d) of the claimant’s application ‘the e-mail included..some mildly worded commentary about the respondent’s criminal fraud scheme and questionably high rates of return on investment. Including a comparison to the legal maximum allowed interest on a payday loan, which is 0.8%.’ [and from paragraphs 8 and 9 of the claimant’s written application] ‘8. The e-mail was shared directly via e-mail to employees of Enigmatic Smile (the respondent) and it’s subsidiary company which had fully owned, Fridel. It was not shared to external clients. 9. The e-mail is a legally protected disclosure, detailing evidence of illegal activity by the respondent to the employees of the respondent. It is not uncommon for a whistleblower to continue to raise issues after dismissal and during proceedings.’

35. *The respondents responding to the e-mail by making an application for strike-out of the claim is an abusive process. Their application is scandalous and unreasonable. In their strike-out application they say the screen shot was sent two weeks’ ago which falsely implies that there is co-ordination and some relevance to my second whistleblowing e-mail due to timing which is a scandalous suggestion and unreasonable. They refer to the case of **Royal Mail v. Wong**. That is irrelevant because Mr Wong made no protected disclosure and it is distinguishable by the fact that he used profanities and his conduct was characterised as ad hominam abuse.*

36. *They (the respondent) don't really have a position here. They are trying to say witness intimidation. Look at the meme. The victims are the staff.*
37. *In the bundle at page 141, it's very faint. On page 139 of the bundle" [information from the registrar of companies] "It states TLN [Tokenised Liquidity Notes] is a series of smart contracts not a company, not deployed by a corporate body etc. That is false. In the most recent version of their website (electronic page 144 of the bundle) they falsely backdated the terms and conditions to before my dismissal claim in an attempt to distance themselves from TLN. This can be shown through the 'way back time machine' which can show earlier versions of updated documents.*
38. *[from paragraph 17(a) of the claimant's written application] 'I e-mailed Ms Doci on 24/02/2026 to ask why the evidence still hadn't been shared. Her response was "As you know we wrote to the Tribunal on 13 February regarding two applications, one of which related to varying order regarding the joint bundle". Making a Strike Out Application and an application for order variation does not excuse or exempt a respondent from non-compliance with the original order to share the evidence.'*

Bias investigation

39. *Bishmeer told the investigators 'first thing's first who is Jamie Holland? Some knob who was being a dick last night' Arron Edwards attempted to cover up my e-mail about first checking. He tried to cover up my protected disclosure by suspending my account but I just worked around it. (electronic page 159 of the bundle) – not a test.*
40. *John Cohen said I threatened to "clothes line" Chade Carter, the HR Manager. That is uncorroborated there is no witness statement "[in the internal investigation]" which contains the word 'clothes line' that is uncorroborated.*
41. *I've been fed back information from employees.*
42. *One month before my dismissal the respondent company had £912 of called up share capital but £50 million of assets. That indicates they had no investment funding.*
43. *New accounts, lies told. The CEO cannot do what he says to investors he can do.*
44. *Look at pages 162 to 165 of the bundle – Shawn Frazer – a flash crash on 28 April 2024 – page 167 where they say that resulted from a wallet being hacked. That contradicts the response to my protected disclosure. They cannot prove that they were hacked. They are telling followers that. It was a hack but they cannot prove it.*

45. *The respondent is continuing to operate in Germany. BAFIN, the Bavarian Regulatory Authority, put out on the same day.*
46. *The current version of the TLN website is very different from the date of my dismissal.*
47. *It contains illegal investment advice encouraging investors to invest more than they can afford to lose (see page 235 of the bundle where they say “go all in or get left behind”).*
48. *So I think that if A relies on B and B relies on C then A relies on C. Hypothetically if it can be established that they are operating a Ponzi Scheme then they are crooks and therefore not credible and therefore the whole ET3 is not credible. I can and should make a fundamental point which is if there is a Ponzi Scheme then strike-out their response. So if their credibility is dependent on a Ponzi Scheme they are crooks and therefore have no credibility and therefore their response should be therefore strike-out their response.”*
49. *From paragraphs 19 of the claimant’s written application “their ET3 response claims that I sent the original whistleblowing e-mail after I was suspended, as a form of retaliation or to defend myself from already being suspended, which Shawn Frazer (CFO and ET3 submitter) would have known to be false.*
 - a. *The suspension letter was sent roughly 12 hours after my whistleblowing e-mail, and makes reference to the whistleblowing e-mail sent earlier. This is **Scandalous**. A contravention of Rule 38.1.a.*
 - b. *I raised this point at the last case management hearing and was told that this point along would not be enough to warrant a strike-out hearing, however I believe that in combination with the rest of the issues here, it shows they are persistently behaving in a manner which goes against the Employment Tribunal rules.”*

The Respondent’s Submissions in opposition to the Claimant’s Application for Strike-Out

50. *The respondent’s representative began his submissions by first raising an issue of lack of notice;*
51. *The claimant’s submission had been largely predicated on the basis that the response should be struck out because the respondent operates a “Ponzi Scheme”, effectively a fraud, and that a fair hearing was, therefore, not possible on the merits of his complaints.*

52. That was not a submission or ground for strike-out which was foreshadowed in the claimant's application.
53. The application which appears at page 46 of the joint bundle largely related to allegations that the respondent's strike-out application itself constituted an abuse of process that, allegations against the respondent's solicitors, inferred representations/misrepresentations and a lack of data protection compliance. And that because of allegedly overarching dishonesty of the respondents and their solicitors, no fair trial was possible on the merits of the claimant's case.
54. No fair notice of that proposition had been given in the application.
55. The respondent's representative separately submitted that such an approach was in any event fundamentally misconceived a matter to which he would return.
56. While recognising that the claimant was a party litigant appearing on his own behalf, any application for strike out nevertheless required to meet and pass the established two stage test, the first stage being whether the grounds upon which the Tribunal may strike-out a claim or response which are set out in Rule 38(1) had been established, and the second stage test being whether or not the Tribunal should exercise its discretion to strike-out or whether there is a less draconian sanction available.
57. The claimant's approach was fundamentally misconceived because it was an approach that goes to the evidence, which was yet to be heard in the case, as to the merits of the claim.
58. If the claimant thinks that the respondents and their witnesses are likely to be incredible, the place to establish that is at an evidential hearing. It is at such a hearing, a proof, that the Tribunal will determine which of two contested versions of events it will prefer on the evidence presented, including whether the respondent and other witnesses, and the evidence given by them, lacks credibility. While he understood claimant's position to be *'these people are crooks so they can have no credibility so they can't succeed'*, that cannot be the basis for a strike-out at this stage in the proceedings. On those grounds the respondent's representative submitted that the application was premature and fundamentally misconceived.
59. That was not to say that issues of credibility can be of no relevance for example, in circumstances where it is proved that a party has taken steps to destroy evidence.
60. Regarding the proposition that a fair trial on the merits of the claimant's complaints was not possible, the claimant had not articulated why that would be the case. The claimant does not say why he cannot challenge the

credibility of the respondent's witnesses at an evidential hearing and the Tribunal should consider that there was no substance to that submission. That was the position also in relation to the claimant's written application for strike-out where that matter was not addressed to any extent.

61. At no point had the claimant articulated how the matters he complained of had calcified into any prejudice at a final hearing.
62. At paragraph 11 of the application (page 47 of the bundle) it is alleged that the respondent's strike-out application was vexatious and that it was made for the purpose of avoiding co-operation with the claimant irrespective of a joint bundle of documents. That was denied by the respondent but even if there had been any substance in it, the claimant's remedy is not to have the response thrown out. The claimant's remedy would lie in opposing the respondent's application for strike-out and if successful seeking costs [an award of expenses].
63. The making of such an allegation does not establish a right on the part of the claimant to seek strike-out of the response.
64. The paragraphs following paragraphs 7 to 13 of the Application essentially re-state the argument that the making by the respondents of an application for strike-out of the claim was vexatious, or in some way a retaliation for what the claimant says was the making of a second protected disclosure by him [in the course of these proceedings].
65. It was not something that had any material impact on the fairness of an evidential hearing or was likely to cause prejudice to the claimant at an evidential hearing. The e-mail objected to by the claimant is not on its face vexatious and certainly not one which has put the claimant at any prejudice in relation to a final hearing.
66. Paragraph 14 of the claimant's application is an attempt to explain that delay in the exchange of documents could disadvantage a party but that is not the same as it having done so. Paragraphs 14(a) to (d) are speculative as to how such delay could result in some grounds existing such as to raise a reasonable suspicion that delay had caused a party prejudice in pursuing his claim, whereas, in fact, it had not done so in the instant case.
67. The respondent's representative submitted that any delay in the process resulted from the claimant's attempts to take his claim in a widely conspiratorial direction.
68. The claimant was an intelligent person who is capable of understanding what his case is about and what it is not about. What the claimant thought about the respondent company on 23/24 January and what he believes has been

'going on' since his dismissal, cannot be relevant to what he believed at the time he made his first asserted protected disclosure and, or, to why he believed it.

69. Paragraph 15 of the application concerns the respondent's alleged non-compliance with a data subject access request. That was and is, a matter which the Tribunal does not have jurisdiction to consider or determine, that jurisdiction lying elsewhere under a separate statutory regime. The Tribunal does have power to order disclosure of documents where an application is not a fishing [diligence]. However, if such an Application was granted, and if not complied with, then that could provide a basis for an application for strike-out but, again, that is not what has happened. Separately, and in any event, the claimant has not developed the proposition by going on to indicate in what actual way the timing of response to the data subject access request has rendered it not possible for a fair hearing in respect of his claims to take place.
70. Paragraph 16, 17 and 18 of the application relate to ongoing discussions between the claimant and the respondent's representative which were not spoken to in oral submission by the claimant. While the paragraphs contain unsubstantiated speculation and criticism of the respondent's legal representatives, they do not demonstrate scandalous conduct nor show how those discussions have caused prejudice to the claimant at a final hearing.
71. Paragraph 19 does no more than identify what the claimant says is a chronological inconsistency in the Grounds of Resistance paper apart to the response form ET3.
72. That provides no basis on which to strike-out a response.
73. The claimant will be entitled to cross-exam witnesses on that inconsistency at an evidential hearing. A respondent's statement of case contained in an ET3 may not reflect what a witness ultimately says and where that occurs in the course of a hearing the sanction may be that a respondent requires to seek leave to amend to bring the pleadings into line with the evidence given and may not be granted such leave. Such a chronological inconsistency does not, however, prevent the claimant from pursuing his claim or result in a fair hearing being not possible.
74. For those reasons, the Respondent's Representative submitted that the claimant's application for strike-out should be refused.
75. Although it was not clear that the remainder of the claimant's application, which sought unless orders was before the Tribunal for determination, for completeness sake the respondent's representative addressed the Tribunal on that matter [albeit, the claimant for his part had not addressed the Tribunal in relation to the application for Unless Orders]

76. The respondent's representative submitted that the application appeared to be pled as an alternative to strike-out. The matter is referred to in the application were such that it would be disproportionate and unnecessary for the Tribunal to move immediately to the making of an Unless Order where there existed the ability to deal with the situation by way of a variation to earlier Orders resulting from the reasonable requirement to determine the strike-out applications first.
77. The case is one in which no Order had been made by the Tribunal authorising the use of witness statements for the taking of evidence-in-chief. The respondents were entitled to take a view on which witnesses they will or will not need.
78. The requirements set out by the claimant at paragraph 3, under the heading 'Unless Orders', would bear to require the disclosure of privileged information by the respondents.
79. A respondent is entitled to say that they sought legal advice before taking a decision where a respondent does so that does not constitute a waiver of any privilege on their part. In any event, what is sought was widely peripheral to the claimant's actual claims which were before the Tribunal namely what was the reason for the claimant's dismissal.
80. The matters focused at paragraphs 3(b) and 5 relate to matters in respect of which the Tribunal has no jurisdiction.
81. It was open to the claimant if he so chose to make an application in accordance with the rules of procedure for an Information Order, but not to seek enforcement by the Tribunal of a data protection act provision which it has no jurisdiction to do.
82. In the above circumstances, and for the above reasons the Respondent's Representative invited the Tribunal to refuse both of the Claimant's applications namely the application for strike-out of the Response and to the extent the same continued insisted upon, the application for Unless Orders.

Submission of the claimant in exercise of a limited right of reply

83. In exercise of his right to make a limited reply the claimant submitted as follows:-

"Given that since January 2025 I have said that the respondents are operating a Ponzi Scheme it is unlikely that Jackson Boyd are shocked or surprised that I have said so. It is questionable that Jackson Boyd continue to provide legal services to the respondents when there is reason to suspect that it is operating a Ponzi Scheme.

Ms Tobin has described herself as the full-time head of compliance DASRS. It is reasonable for me to assume that the Tribunal can investigate that matter because of it's wider public impact. It is my opinion that the Tribunal should have wider jurisdiction to allow it to do that.

The DASRS was addressed.

I think that it has shown that any evidence that I ask for is likely to be concealed. I believe that John Cohen has presented one version of events as if it were fact and furthermore he has seemingly altered the version of events in the witness statement in the internal process by including the term "clothes line" which is a wrestling move. Regarding destroying evidence I say that they have rewritten their side multiple times.

Mr Bridges said that if I felt that I had the horses for this why not contest it all at an evidential hearing rather than trying to strike-out the response. The answer is simple. This process" [the Employment Tribunal case] has been ongoing for a year and half and it is so blatantly obvious that the respondent is running a Ponzi Scheme and that anyone involved with it must be inherently not credible, deceptive and cannot be trusted, and to let them continue within Enigmatic Smile [to resist the claims] is making a mockery of the Employment Tribunal service in the same way that they have been making a mockery of financial regulators for the last four years.

Enigmatic Smile has embarrassed the United Kingdom on the world stage by defrauding a US company. The company is operating on borrowed time as their apps are no longer functional.

It is unlikely that Enigmatic Smile will make it to June.

It is not in the interests of public sources to allow this to continue for any longer than it already has, given how untenable the position of the respondent is and that's why their response should be struck out.

The Respondent's Application dated 13 February 2025

The Respondent's Representative's submissions in support of the Application for Strike-Out of the Claim.

84. In summary, the respondent's representative submitted as follows:-
85. The respondent's written application for strike-out of the claim was to be found at pages 26 to 28 of the bundle. There were two documents appended to the application:
 - a. A screen shot of linkedin communication to an,

- b. e-mail from the claimant of 11 February 2026.
86. The Respondent's Representative adopted and relied upon the terms of the written application. He stated that in approaching the application it was important to bear in mind parties' respective positions before the Tribunal in terms of the claimant's relevant claim namely, that the claimant asserts that he was dismissed because of an e-mail containing various allegations, which he sent on 24 January 2025 to a large number of recipients and which he offers to prove constituted a protected disclosure.
87. The respondent's position is that the claimant was dismissed for gross misconduct at a company social event on 23 January 2025 in consequence of which several fellow employees made complaints to the respondent about his conduct. The respondent had suspended the claimant pending investigation and thereafter, having followed procedure, dismissed him for misconduct, and not because of the content of or act of sending the e-mail. The respondent's position will be that they consider that the claimant, having reflected on his conduct and the likely consequence, sent the e-mail by way of setting up a potential complaint of the type which he subsequently brought. The allegations of misconduct made against the claimant were very serious allegations which provided a motivation for him to do so.
88. The respondent's position at substantive hearing will be to lead evidence of the claimant's behaviour at the social event and which if accepted by the Tribunal, will provide a plausible reason for dismissal. The respondent considers that the claimant's behaviour was so outrageous as to prompt him to think *'what can I do about this'*.
89. The significance of the submission was that the witnesses in the case, who will speak to the claimant's conduct at the social event, were likely to be rank and file members of staff rather than senior management or directors who may be expected to have more experience of taking decisions in relation to, for example dismissal, and having to give evidence justifying those decisions in proceedings. The e-mail on page 30 of the bundle was sent to a number of witnesses/potential witnesses as to that conduct and it was submitted carries a clear implied threat, when coupled with the meme showing an astronaut about to be assassinated, namely *'these are serious allegations and this is what will happen to you if you speak against me I will make allegations such as this against you and will ruin you.'*
90. The respondent's representative rejected the claimant's assertion that the definition of a "Ponzi Scheme", to which he had referred the Tribunal, was one couched in neutral terms rather, he submitted, the definition clearly defines a fraudulent scheme and the proof of that is an implied threat.

91. No other explanation is presented or is apparent as to why the claimant would send an e-mail in such bombastic terms to so many different people.
92. In that regard, the Respondent's Representative submitted that the purpose of the e-mail was to scare people off. It can be inferred from what he (the claimant) had not done. The claimant, that is to say, while the claimant appears prepared to allege fraudulent criminality he had not gone to the Police. Moreover, the tone of the e-mail is not consistent with what he says he was doing namely *"to give friends a heads up that they may be inadvertently working on a Ponzi Scheme"* if that was the true intended message, it could have been delivered more discreetly even on a one-to-one basis. The meme, which is of someone shooting someone else in outer space, is glib. If the claimant was genuine in what he now says he was trying to communicate, a more dignified way of communication would have been used by him. With the exception of Miss Doci who is an employee of the respondents legal representatives, the people to whom the e-mail of 11 February was sent by the claimant were employees or former employees of the respondent and included in particular four individuals who had given evidence as to the claimant's conduct in the internal investigation, Chade Carter, Barry Helfrich, Matthew Gallacher and Jamie Sefton.
93. At the time of sending the e-mail Mr Holland was aware that they had provided statements in the internal investigation about his conduct at the social event.
94. Further, regarding the extent to which the claimant had made express and implied attacks upon the solicitors representing the respondent, it was not the claimant's business as to whether the respondent's solicitors had done what the claimant described as "diligence" on their clients. At pages 40/41 under the heading "Undisclosed Conflict of Interest", the claimant named Miss Doci and Miss White as individuals having undisclosed conflicts of interest in their acting on behalf of the respondent as well as two of the respondent's solicitor's firm's partners to the head of anti-money laundering at the Law Society of Scotland. The claimant's actions in so doing imply that the solicitors named are doing wrong by reason of their acting in a conflict of interest situation and benefitting from it, and that they were breaching the law by not reporting what he considered was his suspicion, which he implied they should share, that money laundering was taking place.
95. In the claimant's application at page 51 of the bundle, at sub-paragraph F(i), he states that it would have been entirely unreasonable and unprofessional for Miss Doci to advise the head of compliance to persist in talking and conceding DSAR based on undisclosed "reasonable doubts" about the ownership of the e-mail addressing question.

96. At paragraph 16, page 51 he alleges that Miss Doci grossly misrepresented his second whistleblowing e-mail, “sent on 11 February 2026”, in the respondent’s strike-out application by omitting from it any mention of the highly incriminating video presentation by Bishsmeir and further at subparagraph c what he characterises as the “deliberate omission”, as scandalous conduct which contravenes Rule 38(1)(b). The claimant’s casting of allegations about various named parties is designed to have a chilling effect.
97. While it was recognised that the Employment Tribunal is designed to be less formal and more user friendly than other courts there is still a requirement that parties, including litigants in person, conduct business before it with dignity and with respect for people doing their job. That requirement is something that falls to be distinguished from the putting of hard questions to witnesses in the course of cross-examination at a proof. The principles of common human decency indicated that the way the claimant is behaving is not a way that people should be treated. It is conduct which anyone with any knowledge of the principles of common decency knows is conduct which is scandalous and/or vexatious.
98. Turning to the consequences for the respondent in mounting its defence, the claimant’s conduct results in material witnesses, if they know that the claimant is signaling “I am prepared to make speculative allegations against any one who stands in the way of my case”, will give them pause to consider the way in which they give their evidence.
99. So this is not as much a case of whether a witness will be discouraged to turn up to give their evidence. It is not a binary issue of will the witness show up or not show up. It is more nuanced than that. If attending the Tribunal with reservations about the consequence of giving their evidence freely, it was bound to have impact upon the quality of their evidence.
100. Circling back to the point made at the beginning of the submissions, that the likely witnesses are rank and file members of staff not directors and senior managers who would be normally regarded as the respondent.
101. On the above grounds and for the above reasons including those set out in the written application, the respondent’s representative invited the Tribunal to hold that the claimant’s conduct was vexatious, and separately unreasonable conduct of proceedings such as to awake the Tribunal’s discretion in terms of Rule 38(1) to strike-out the claim.
102. Turning to the second part of the test, the respondent’s representative submitted that there was no less draconian sanction available to the Tribunal

to prevent the potential damage to the respondent's ability to defend itself, or to prevent the claimant from engaging further in such conduct.

103. There exists potential for such damage to have already been done thus rendering a fair hearing not possible. The claimant's e-mail having been sent, there was a real risk that such damage had already been done and in those circumstances, Strike-Out was only the appropriate remedy.

The claimant's submissions in response to the respondent's application for strike-out of the claim

104. In exercising a limited right of reply the claimant further submitted as follows:-

"Mr Briggs" [the respondent's representative] "had questioned whether I had had any contact with authorities. It was inappropriate to ask that. It appears to be an attempt to tip off his clients" [the respondent] "about any investigations by regulators or authorities into the respondent's Ponzi Scheme.

It is clear that I reported Jackson Boyd to the Anti-Money Laundering of the Law Society given the current state of cash flow on the respondent.

Due to new evidence, any previous due diligence around cash flow of the respondent will have become outdated. I am clear that Jackson Boyd have a vested interest in myself being silenced in strike-out. If I continue to speak, if it goes the full distance that will cause embarrassment for Jackson Boyd; because they have lost against a party litigant, also because it will encourage media scrutiny, about whose been taking money off whom in respect of representing the respondent in their litigation, and the fact that I was dismissed for reason of having made a protected disclosure.

It's mischievous to suggest that my criticisms of Jackson Boyd should be characterised as personal attacks on young newly qualified female solicitors that is misleading. Miss Doci is a senior solicitor. Miss Gwennan White I now say did nothing wrong.

It is their professional conduct that I am challenging.

Their written application for Strike-Out is scandalous because it omits the video from which I have prepared an accurate transcript.

Not once in his submissions has the respondent's representative denied that the respondent are operating a Ponzi Scheme. Nor has he denied that the respondent is operating and promoting an investment plan without regulatory compliance.

It seems strange to me that they are allowed to get away with that. I have been told previously that videos are allowed but Mr Murray Anderson [one of the respondent's solicitors] did not add it to the bundle. That in itself is scandalous because ultimately determining whether the disclosure made was a protected disclosure will be informed by listening to the video albeit the transcript produced by me is accurate." [that this was the reason underlying the claimant's assertion that the non-inclusion of the video in the hearing bundle was scandalous was confirmed with the claimant by the Judge]

"The meme in question is what happened to me. I believe it's a clear reference to what happened to me. There is a double entendre in that what is being implied is going to happen is a reference to 'Terminator 2' and Bismuir uses the reference 'hasta las vista' in his conversation which is also a reference to 'Terminator 1'. It is unlikely therefore that Bismuir would not see this double entendre as he uses that Terminator 2 reference in his normal pattern of speech.

As to it being a threat of future action, I think it is the same for all the others. The meme is satirical, it is not for witness intimidation. There needs to be a threat and a clear direct intimidation.

It might cause negative emotions at the time but I dispute the ability of people to disentangle their negative emotions from the giving of their evidence.

Also it would contravene my free speech. In newspapers, political cartoons frequently appear. The e-mail is a quintessential protected disclosure.

Five out of eight of the witnesses have left the company. I sent the e-mail because I wanted everyone to know the truth before they were made redundant. I wanted people to know I was telling the truth because what the respondent has said about me was character assassination.

I have raised the point before. Witness intimidation is a serious allegation. Why have they not gone to the Police. Why have I not been sued for defamation.

Five out of the people who have been identified as witnesses have left the company.

The respondents are wrong to suggest that I did it to engineer a basis for a claim against them.

I established myself as a liability to their Ponzi Scheme. I was certain that they would find a spurious reason to get rid of me. I was being paid £85,000 a year for doing nothing.

I dispute that Mr Crone works for the company. I believe he is a director of a separate scheme. What does he do? He came out of the woodwork during my investigation.

I wasn't in Vienna.

I went into this process with my eyes open. I suggest that the odds that I am here for a payout are very low. That there is a very low chance of me recovering compensation. I am mostly here for damage to my reputation to be repaired."

The respondent's representative's submission in reply.

105. In exercise of a limited right of reply, the Respondent's Representative made clear that he had no implied admission on the part of the respondents arose from the fact that in the course of his submissions he had not expressly denied some or any of the allegations made by the claimant. Nor had he responded to the document which was referred to as "draft findings in fact" not being a document in the bundle and today's hearing, this not being an evidential hearing at which the Tribunal would make any findings in fact. Regarding the reporting of matters to the authorities, he believed that he had made as clear as possible that, to the best of his knowledge, no criminal allegations had been made to the Police by the claimant.

The applicable law

106. The Tribunal's power to strike-out all or part of a claim or all or part of a response or reply, either on its own initiative or on the application of a party, is contained within Rule 38 of the Employment Tribunal Procedure Rules 2024 which is in the following terms:-

"Striking out

38.—(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—

(a) that it is scandalous or vexatious or has no reasonable prospect of success;

(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;

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim, response or reply (or the part to be struck out).

(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.

(3) Where a response is struck out, the effect is as if no response had been presented, as set out in rule 22 (effect of non-presentation or rejection of response, or case not contested).

(4) Where a reply is struck out, the effect is as if no reply had been presented, as set out in rule 22, as modified by rule 26(2) (replying to an employer's contract claim)."

107. The Tribunal's power to strike out is permissive and involves a two-stage process and test:-

"The first stage involves the Tribunal being satisfied that one of the specified grounds, as set out in Rule 38(1) sub-paragraphs (a), and/or (b), and/or (c), and/or (d), and/or (e), has been made out. That is a necessary first step but it is not of itself sufficient to result in strike-out or rather has the effect of awakening the Tribunal's discretion to strike-out.

The second stage involves the Tribunal in determining, in the particular circumstances presented and in the exercise of its discretion, whether to strike-out the claim or response, or to take some other, potentially less draconian action. That discretion requires to be exercised judicially and in accordance with the requirements of the overriding objective which is set out at paragraph in Rule 3 of the Procedure Rules.

Guidance on how the terms now reflected in Rule 38 are to be interpreted can be found in the Judgments of the Higher Courts in:-

1. ***Bennett v. Southwark London Borough Council*** [2002] ICR 881, CA;
2. ***Jones v. Wallop Industries Limited*** ET Case No. 17182/81;
3. ***ET Marier Limited v. Robertson*** [1974] ICR 72 NIRC;

4. ***Attorney General v. Barker*** [2001] FLR759, QBB (Civ Div) per Lord Chief Justice Bingham;
5. ***Cabo Concepts Limited v. MGA Entertainment (UK) Ltd & Another*** [2022] EWHC 2024 (PaT);
6. ***Hassan v. Tesco Stores Limited*** UKEAT/0098/16;
7. ***Sud v. London Borough of Hounslow*** UKEAT/0156/14;
8. ***Ituluv v. London Fire Commissioner*** UKEAT/0298/18;
9. ***Anyanwu v. Southbank Students' Union*** [2001] IRLR 305;
10. ***Ezsias v. North Glamorgan NHS Trust*** [2007] IRLR 603;
11. ***Tayside Public Transport Company Limited (t/a Travel Dundee) v. Riley*** [2012] IRLR 755;
12. ***Balls v. Downham Market High School & College*** [2011] IRLR 217 at para. 4;
13. ***ED & F Man Liquid Products Limited v. Patel*** [2003] CP Rep. 51 per Potter LJ at Para. 10;
14. ***UK Egheson v. Harringay London Borough Council*** [2015] ICR 1285;
15. ***Ahir v. British Airways Plc*** [2017] EWCA Civ 1392 per Elias LJ;
16. ***Dean v. Islam Foundation*** [1998] IRLRL 290;
17. ***Mechkarov v. Citi Bank NA*** [2016] ICR 1121;
18. ***Cox v. Adecco & Others*** [2021] ILEAT/03390/19; and

As to the nature of a claim or the manner of it's conduct,

19. ***Blockbuster Entertainment v. James*** [2006] EWCA Civ 684;
20. ***Fariba v. Pfyzer Limited*** UKEAT/0650/10;
21. ***Smith v. Tesco Stores Limited*** [2023] EAT11;
22. ***Itulu v. London Fire Commissioner*** UKEAT/0298/18;
23. ***Bolch v. Chapman*** [2004] IRLR 140;

24. ***Gainford Care Company Limited v. Tipple*** [2016] EWCA Civ 382;
25. ***Bennett v. Southwark London Borough Council*** [2002] IRLR 407;
26. ***Harris v. Academies Enterprise Trust*** [2015] IRLR 2008
Non-compliance with Rules or an Order
27. ***Baber v. Royal Bank of Scotland Plc*** UKEAT/0301/15;
28. ***Emuemukoro Emuemukoro v. Croma Vigilant (Scotland) Limited & Others*** EAT 2000-006;
29. ***Essombe v. Nandos Chickenland Limited*** EAT 0550/06;
30. ***National Grid Company Plc v. Virdee*** [1992] IRLR 555;
31. ***North Tyneside Primary Care Trust v. Aynsley*** [2009] ICR 1333; and,
- As to Discretion
32. ***HM Prison Service v. Dolby*** [2003] IRLR 694;
33. ***Hassan v. Tesco Stores Limited*** UKEAT/0098/16;
34. ***Mbuisa v. Cygnet Health Care Limited*** EAT 0119/18;
35. ***Rainwood v. Pemberton Capital Advisors LLP*** [2025] EAT 51.

108. The term “scandalous” in the context of Rule 38(1)(a) and (b) means irrelevant and abusive of the other side. It is not to be given its colloquial meaning of signifying something that is shocking – ***Bennett v. Southward London Borough Council*** at paragraph in ***Jones v. Wallop Industries Limited*** ET Case no. 17182/81 in which the claimant claimed that he had been unfairly selected for redundancy and, to back-up his claim, alleged fraud, mismanagement, misrepresentation, criminal conspiracy, intimidation and ‘other “torts”’ (Delicts) against his employer. The Employment Tribunal, in England and Wales, found that the claimant’s acting in causing the respondent company and a number of individuals named in the proceedings, as much inconvenience, distress, embarrassment and expense as possible, constituted acting in the conduct of proceedings in a largely scandalous or vexatiously manner, and struck out the claim on that basis.
109. A vexatious claim or defence has been described as one that is not pursued with the expectation of success, but to harass the other side or out of some

improper motive (ET **Marler v. Robertson** [1974] ICR 72 NIRC). The term is also used more widely to include anything that is an abuse of process. In **Attorney General v. Barker**, Lord Chief Justice Bingham described 'vexatious' as a 'familiar term in legal practice'. He said that the hallmark of a vexatious proceeding is that it has 'little or no basis in law (or at least no discernible basis); that whatever the intention of the proceeding may be, it's effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and that it involves an abusive process of the court, meaning by that, "use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process"'.

110. Conduct of proceedings are unreasonable in the context of Rule 38(1)(b), if it is found to be outside the 'ordinary and reasonable conduct of proceedings'; **Cabo Concepts Limited v. MGA Entertainment (UK) Limited & Another** [2022] EWHC 2024 (PaT).
111. The determination of applications for strike-out involves a two-stage test or process:
 - a. Firstly consideration of whether any of the grounds set out in Rule 38(1)(a) to (e) are to be regarded as having been established (the first stage) and
 - b. Having identified any established ground, the Tribunal must, secondly, decide whether to exercise it's discretion to strike-out given the permissive nature of the Rule (second stage) – **Hassan v. Tesco Stores Limited** UKEAT/0098/16;
 - c. The consideration of the extent to which a "fair trial" would remain possible will generally also be relevant together with;
 - d. whether a less draconian measure is available to the Tribunal.
112. The mere fact that one of the parties has previously been involved in litigation in which the issues were substantially the same issues, will not generally, without more, justify striking out a further claim as an abuse of process.
113. A Tribunal is entitled to strike-out a claim or response because of the scandalous, vexatious or unreasonable conduct of the proceedings by either party or their representative. Generally the Tribunal will require to be satisfied that the conduct in question constitutes or amounts to 'conduct of proceedings' themselves, which will not necessarily cover all objectionable conduct by one party towards another, and further, that it amounted to unreasonable conduct of the proceedings in terms of Rule 38(1)(b).

114. It is helpful to view the sanction of strike-out, not as a punishment, other than in exceptional circumstances, but rather as the appropriate response to the manner in which proceedings have been/are being conducted. In ***Sud v. London Borough of Hounslow*** UKEAT/0156/14, the EAT upheld an Employment Tribunal's decision to strike-out a claim on discovering that the claimant had tampered with medical evidence; and had separately tried to mislead the Tribunal when applying for a postponement. In the circumstances, the Tribunal was entitled to decide that it had lost trust in the claimant's veracity and that there could not longer be a fair trial.
115. In ***Itulu v. London Fire Commissioner*** UKEAT/0298/18, the issue of medical evidence was also considered by the EAT. The claimant repeatedly and unreasonably refused to be seen by joint medical experts ordered by an Employment Judge in respect of her disability discrimination claims. The EAT held that the Employment Judge was entitled to find the claimant's unreasonable conduct made a fair trial impossible and to strike-out her disability discrimination claims. An Unless Order was inappropriate in the circumstances given her repeated refusals and the further unnecessary delay and expense such an Order would cause. The Tribunal was satisfied, in that case, that the claimant's conduct in that regard was unreasonable conduct of a serious nature which showed her to be willing to mislead the Tribunal in a material matter in the context of which a fair hearing would not be possible.
116. A party's persisting ability or unwillingness to comply with the Orders of the Tribunal can amount, in the particular circumstances of a case, to conduct which has the effect of frustrating the doing of justice.
117. In this context the term 'scandalous' is not synonymous with 'shocking'; rather, it is the misuse of legal process to vilify others, or gratuitously insult the Tribunal in the course of proceedings.
118. Scandalous, unreasonable or vexatious conduct is conduct that tends to subvert the process of justice and has the potential to impair the fairness of a trial.
119. In respect of applications founding on Rule 38(1)(b) the conduct of proceedings the issues for consideration are:
 - a. Whether the conduct in question was scandalous, vexatious or unreasonable;
 - b. Whether a fair trial is still possible; and
 - c. Whether strike-out is a proportionate sanction in the circumstances including whether there is available to the Tribunal a less draconian sanction.

The Applications

120. In terms of his initiating application ET1 the claimant bears to give notice of presenting three claims albeit, in relation to two of them, still wanting in specification.
121. The first claim advanced by the claimant is that he was automatically unfairly dismissed by the respondent in terms of section 103A of the Employment Rights Act 1996 ("ERA"), on the grounds that in his e-mail of 24 January 2025 to the respondent he made a protected disclosure. Although much of the discussion at the Open Preliminary Hearing of 21 April 2026 focussed upon what the claimant characterises as "my second whistleblowing e-mail (sent 11/02/2026)", it is self-evident that neither the act of sending, nor the content of that e-mail could have had any impact on the respondent's decision to dismiss the claimant, that dismissal having occurred prior to the sending of the e-mail.
122. The respondent for its part asserts, and offers to prove, that the reason for the claimant's dismissal, communicated to him by letter dated 3 February 2025, was what, following an internal investigation, the respondent found to be established as his gross misconduct at a social event which had occurred on 23 January 2025. That reason, the respondent asserts, was a potentially fair reason in terms of section 98(2) of the Employment Rights Act and was a reason wholly unconnected with the e-mail sent by the claimant, or with any alleged disclosure said to be contained within it, on 24 January 2025.
123. The primary issue of fact focussed by party's pleadings, in respect of section 103A of the ERA, and requiring investigation and determination at an evidential hearing is that of;
 - a. "What was the reason, or if more than one the principal reason, for the respondent's admitted dismissal of the claimant on 3 February 2025."
124. The remaining two claims are respectively a complaint of discrimination because of the protected characteristic of race, the claimant relying upon his Irish nationality.
125. The third claim is one of discrimination because of the protected characteristic of religion or belief. The belief given notice of as relied upon the claimant being a belief that "Palestine should have the right to self-determination as a state", which he asserts, was at the material time, a philosophical belief held by him.
126. An inference may be said to arise from the terms of the claimant's as yet insufficiently specified second and third claims, that his protected

characteristics of race, his asserted characteristic of religion or belief, in some way informed the respondent's decision to dismiss him.

127. The submissions made by both parties in the course of today's hearing, respectively in support of and in opposition to their mutual application for strike-out made no reference to the second or third claims but rather to the extent that reference was made in that regard, to only the first complaint of section 103A automatic unfair dismissal.
128. In terms of his Judgment, sent to parties on 9 September 2025, Employment Judge Macleod refused an earlier argued application at the instance of the respondent for strike out of the claims, while noting that there were subsisting issues of lack of fair notice which require to be addressed by the claimant.
129. A first Case Management Closed Preliminary Hearing proceeded before Judge Maclean on 31 October 2025 and in terms of her Orders, sent to parties on 13 November 2025, which appointed the case to a further Case Management Discussion (Closed Preliminary Hearing) for review of parties' state of compliance with the detailed Case Management Orders which she issued at the hearing of 31 October 2025.
130. At the Closed Preliminary Hearing (Case Management Discussion) which proceeded before Judge Whitcombe on 16 January 2026, the Employment Judge disposed of a number of applications which were before him at the hearing, recorded the detail of adjustment of and confirmed the final List of Issues which he remitted to a Final Hearing to proceed at Glasgow before a Full Tribunal in conventional in-person form and commencing at 10am on 15, 16 and 17 June 2026. He provided a timetable for the conduct of the Hearing making clear that the terms indicated were allocations of time and not estimates, and directed parties to agree between them and lodge in advance of the hearing a mutually worded chronology, and a list of key people involved, stating also their job title and role in the case.
131. A written copy of Judge Whitcombe's Case Management Orders, made orally by him at the Hearing of 16 January 2026, were sent to the parties on 27 January 2026.
132. On 11 February the claimant disseminated the e-mail of 11 February 2026 together with its attachments all as referred to as produced above in the hearing bundle.
133. In response to; the act of sending, the content of the 11 February 2026 email, and the number of persons to whom it was sent by the claimant the respondent lodged and intimated a further application, dated 13 February 2026, for strike-out of the claimant's claims.

134. In response to the respondents doing so, the claimant, for his part, intimated and lodged his application dated 3 March 2026 for strike-out of the response.
135. As made clear to parties in the course of the hearing, in determining the respective applications the Tribunal took account of the terms of each party's written applications together with the oral submissions made by them at hearing. The terms of the written applications were exchanged in advance of and were available to the Tribunal at the Hearing. The terms of parties' respective applications are accordingly not set out in their entirety but rather, are each referred to for their terms which, for reasons of brevity, are held incorporated here.

Discussion and Determination

Claimant's application dated 7 March 2026 for Strike-Out of the Response

136. At paragraphs 13 and 16 of his interlocutory Orders of 16 January 2026, under the headings "Exchange of Documents" and "Agreeing a File of Documents for the Hearing" Judge Whitcombe respectively ordered as follows:-

*"13. By no later than **13 February 2026**, the parties must send to each other:*

*a. The documents in which they intend to rely at the hearing;
and*

b. Any documents properly requested by the other party"

*"16. The Joint Set of Documents must be sent to all parties and to the Tribunal by no later than **27 February 2026**."*

137. On 13 February 2026, when making their application for strike-out, the respondent also made written application for variation of Judge Whitcombe's Orders 13 and 16 seeking suspension by the Tribunal of the dates specified in the Orders for compliance pending, that is to say until after, the determination of the application for strike-out. That application for variation was referred on 2 occasions to an Employment Judge who, at first instance neither granted or refused it but rather directed that parties should liaise regarding how best to proceed in respect of that matter. Although the application for variation was subsequently re-referred, an examination of the digital case file does not record a final determination of that application, that is to say a granting or refusal of it, and the Tribunal considers that the application falls to be regarded as one consideration of which the Employment Judge to whom it was referred continued, pending the determination of both of the applications for strike-out.

138. The claimant sought strike-out of the response in terms of Rule 38(1)(c), “*for non-compliance with any of these rules or with an order of the Tribunal*”, citing the respondent’s asserted non-compliance with Orders 13 and 16 of the 16 January 2026 Orders. While acknowledging that the respondent had made application for variation of the Orders before the dates of compliance were reached, the claimant submitted that the mere making of such an application did not relieve the respondent of their obligation to comply with the Orders until such time as they were varied by the Tribunal. He accordingly submitted that the requirements of Rule 38(1)(c) were met by the respondent’s subsisting non-compliance with the Orders.
139. As the digital case file discloses no interlocutor varying or suspending Orders 13 and 16 of the 16 January having been pronounced, the Orders remain in force albeit no longer capable of being complied with in respect of the dates specified in them, and the respondent’s non compliance with them not being put in dispute at the Hearing, the Tribunal is satisfied that the requirements of section 38(1)(c) are met in respect of Orders 13 and 16 of 16 January 2026, such as to awaken its discretion to strike-out the claim (stage 1 of the test).
140. Turning to stage 2, the Tribunal considered that the breach was not one which, in the circumstances, merited strike-out. While it is not clear, on the face of the directions given by the Judges to whom the application was referred, why they neither expressly granted or refused the application for variation the consequence of the breach is not such as to render a fair hearing impossible and, a less draconian remedy is available to the Tribunal namely, the variation of the Orders such as to set new dates for their compliance, there being sufficient time remaining between the date of this Judgment and the Final Hearing dates for that process to be completed if required. In the exercise of its awakened discretion, the Tribunal accordingly declines to strike-out the response in terms of Rule 38(1)(c) on the grounds presented.

Rule 38(1)(a)

141. The Tribunal also understood the claimant to found upon and to be seeking strike-out in terms of Rule 38(1)(a) – “*That the response was scandalous, or vexatious, or has no reasonable prospect of success.*”
142. In relation to “scandalous”, the claimant sets out that ground at paragraph 19 of his written application in which he focused what he invited the Tribunal to accept was a deliberately stated chronological inconsistency in a particular passage of the grounds of resistance namely, that passage in which the respondent gives notice of believing that the claimant’s sending of his e-mail of 25 January 2025 was a form of retaliation to his having been suspended pending investigation into his alleged misconduct.

143. The claimant submitted that that part of the grounds of resistance fell to be regarded as scandalous given that it was evident, on the face of the timing of the sending of his e-mail of 24 January, on the one hand, and the e-mail under cover of which his letter of suspension was sent to him, on the other, that he sent his (disclosure) e-mail 12 hours prior to the communication to him of his suspension.
144. The Tribunal accepted, on the face of the documents presented in the Joint Bundle, that that “chronological discrepancy”, to use the description applied to it by the respondent’s representative, does appear. The Tribunal considered, however, that the mere occurrence of such a discrepancy falls far short of what would be required to satisfy the definition of “scandalous, vexatious or unreasonable conduct” that being conduct which tends to subvert the process of justice and has the potential to impair the fairness of a hearing.
145. It is not uncommon for some elements of particulars of claim, or of grounds of resistance, as first pled, to be found to be unsupported by the documentary and/or oral evidence ultimately presented at an evidential hearing. It is competent for parties to make, and the Tribunal not infrequently grants applications for leave to amend, their pleaded case to bring it into alignment with the evidence which has emerged at an evidential hearing albeit it is equally true that such an application may be refused depending upon its detail and timing.
146. It is equally possible that the pleading of the apparent chronological consistency is the result of an error on the part of the pleader.
147. The claimant’s invitation to the Tribunal to regard the averments as deliberate, knowingly falsely made by the pleader, was speculative. The Tribunal did not consider that the requirements of Rule 38(1)(a) were met in respect of the passage of averment referred to and it declined to strike-out the response on that ground as advanced. Neither did the Tribunal consider that the presence of the passage of averments criticised in the respondent’s grounds of resistance resulted in it no longer being possible to have a fair hearing in respect of the claim. Were the passage to remain and let it be assumed that the claimant is correct in what he says regarding the timing of the respective communications, and if the respondents continue to stand upon the averment, it will be open to the claimant to challenge its accuracy in cross-examination of the respondent’s witnesses and to explore whether there is any merit in his current speculation that the inclusion of the averment with the inconsistency was deliberate on the part of the respondent rather than as the result of an error, and to develop in evidence what if any he says the impact of that has had upon the fairness of the hearing.

148. At paragraphs, 20, 21 and 22 of the written application, the claimant identifies a number of inconsistencies as between the terms of his letter of dismissal, versions of the statements of witnesses in the internal investigation and, in part, the terms of the grounds of resistance. Based upon these he invites the Tribunal to conclude that in their conduct of the internal disciplinary investigation the respondents knowingly and deliberately altered the statements, of the individuals who had complained about the claimant's conduct which he proposes would be scandalous, let it be assumed that it had occurred.
149. At paragraph 21 he makes reference to a response made by a colleague Shawn Frazer, to his whistleblowing e-mail which he asserts contained misstatements about the relationship of an individual "Joerg Witke" and the respondent's stating that Shawn Frazer did so in his response "*in a bid to discredit me to my colleagues*". The claimant invites the Tribunal to hold that Shawn Frazer so doing constituted the conduct of proceedings by the respondent which has been scandalous. The criticisms advanced at paragraphs 20 and 21 appear, on their face and as presented at the Hearing, to relate to the internal investigation and disciplinary proceedings all of which took place prior to the proceedings before the Employment Tribunal were raised. That of itself raises question as to whether or not such conduct would fall within the terms of Rule 38(1)(b). Separately and in any event the Tribunal could not, on the grounds advance, be satisfied as to the truthfulness or otherwise of any such statements and/or as to the motivation of any party in the making them those all being matters which, if relevant to the determination of the actual issues before the Tribunal at final hearing, will require to be tested in evidence.
150. The Tribunal did not consider the requirements of Rule 38(1)(b) had been satisfied in relation to paragraphs 20 and 21 of the written application and declined to strike-out the response on that ground as advanced.
151. At paragraph 22, the claimant criticises what he considers had been the tardiness of the respondent firstly in submitting their response form ET3 late and secondly, in sending the "List of Issues" to him only two days before the Preliminary Hearing of January 2026 resulting in a situation in which "*Judge Whitcombe had to manually access the e-mail inbox to retrieve it, from what I remember*". The Tribunal extended time for the submission of the ET3 and that is a matter which has already been dealt with and which does not engage the terms of Rule 38(1)(b). Likewise the occurrence of a time lag between parties sending documents to the Tribunal and these being uploaded into the digital case file does not engage Rule 38(1)(b).
152. At paragraph 23 of the written application the claimant relies upon Rule 38(1)(a) – "*the response enjoys no reasonable prospect of success*".

153. What is said at paragraph 23, as expanded upon in the claimant's oral submissions, is that the respondent has little chance of succeeding in the litigation and that in consequence they are *"preparing for the worst"*, that they have formed a new company on 19 February 2026 and further, at paragraph 24 *"that their behaviour is evidentially criminal, persistently non co-operative, non-compliant and is adversely affected my ability to have a fair hearing"*, that the respondent's 'breach of the Data Protection Act' section 173 constitutes a criminal offence and that the Tribunal should *"make a finding in fact to that effect detailing all who were party to this crime"* and that if *"more than one person is found culpable, that adds a conspiratorial element, which would be an aggravating factor"*.
154. In the course of his oral submissions, in expansion upon paragraph 23 of the written application the claimant submitted that the Tribunal should consider it already established that the respondent was running and promoting a "Ponzi Scheme", which amounted to a criminal fraud, and that therefore the respondents were "crooks". That in consequence they could enjoy no credibility at an evidential hearing and must, of necessity, lose and therefore, that the response should be struck out prior to an evidential hearing.
155. That last proposition was one which the claimant re-iterated on a number of occasions in the course of his oral submission, albeit it was not one of which he had given notice in his written application. It was a proposition that was predicated upon a requirement or assumption that the Tribunal should hold established a number of contested crucial matters which form a core of disputed facts and that it could and should do so at this stage prior to the final evidential hearing. The Tribunal rejected that proposition. Considering that, in so far as relevant, a code of disputed facts should be tested and established or not established in accordance with the burden and standard of proof at an evidential hearing, the Tribunal declined to strike-out the Response upon the ground advanced.
156. In relation to the matters advanced and relied upon by the claimant and upon which he invited the Tribunal to conclude that a fair hearing in the case was no longer possible and to strike-out the response in terms of Rule 38(1)(e), the Tribunal did not consider that any of the grounds advanced had established or required it to conclude that a fair hearing on the merits of the claimant's complaints which, at it's core, requires determination of the issue:- "What was the reason, or if more than one the principle reason for the respondent's admitted dismissal of the claimant" was no longer possible. The Tribunal did not consider that the requirements of Rule 38(1)(e) had been met and declined to strike-out the response on that ground as advanced.
157. The Tribunal did not consider that the act of the respondent in making an application for strike-out of the claim on the grounds advanced in it's written

application dated 13 February 2026, or in standing-upon that application at Open Preliminary Hearing, constituted conduct of proceedings which met the requirements of Rule 38(1)(b), the making of such an application being something which is provided for in the Rules of Procedure, and the grounds upon which it was and is advanced being, in the consideration of the Tribunal, stateable and plausible grounds. Nor did the Tribunal accept the contention that the terms of the strike-out application itself were scandalous, vexatious or unreasonable. The Tribunal did not consider that the requirements of Rule 38(1)(a) were met and declined to strike out the Response on that ground as advanced.

158. In summary, upon consideration of the written grounds of application as supplemented by the oral submissions made by the claimant at the hearing, and with the exception of the requirements of Rule 38(1)(c) in relation to Judge Whitcombe's Orders of 13 and 16 of 16 January 2026, the Tribunal, otherwise, considered that none of the requirements of Rule 38(1)(a), (b), and or (e) being the grounds relied upon by the claimant were met such as to awaken it's discretion to strike-out the response. In relation to Rule 38(1)(c) while considering that the requirement of that Rule had been met such as to awaken it's discretion to strike-out, in the judicial exercise of it's discretion, in accordance with the requirements of the overriding objective including the requirement for proportionality, not considering that the consequence of the failure was that a fair hearing could no longer be had and, considering, further, that a less draconian remedy was available to the Tribunal through the variation of Judge Whitcombe's Orders 13 and 16 such as to substitute new dates for compliance, the Tribunal declined to strike-out the response on that ground. The Tribunal accordingly refuses the claimant's application of 3 March 2026 for strike-out of the response.

The Respondent's Application, dated 13 February 2026 for Strike-Out of the Claim

Background

159. In terms of the written application dated 13 February 2026, the respondents set out the following chronology of events by way of backdrop to their application viz:-
- "a. On 24 October 2025 an agenda was submitted on behalf of the respondent confirming that Mr John Cohen would be one of the witnesses called to give evidence at the final hearing in the case;
 - b. In a case management hearing on 16 January 2026, the respondent confirmed that Mr Bish Smeir and Mr John Cohen would both be called as witnesses to give evidence.

- c. The dispute [between the parties] also concerns an as yet anonymous witness who provided evidence during the course of the claimant's internal disciplinary process.
- d. The respondent's representative had been informed that the claimant has since sought to contact various members of the respondent's team in an attempt to identify the anonymous witness, he did so using the social media platform LinkedIn by means of a communication which is copied and produced at paper page 29 of the Joint Bundle and in which he states *"Hi, my employment tribunal is coming soon. You might be called as a witness. Can we talk about your witness statement?"* [in the internal disciplinary process] *"Why was it not signed? I suspect parts are altered. Can you please reply?"*.
- e. On 11 February 2026 at 16.33, the claimant issued a mass e-mail to around 20 recipients, which included two of the respondent's key witnesses (John Cohen and Bish Smeir), the respondent's employees, investors and it's legal representatives. In particular, the claimant wrote:-

"....been a while since I told you all about TLN/the lastnetwork being a pyramid scheme to pump the price of VOW, for which Enigmatic-Smile is a front. It's still going. Nothing much has changed.

Same rodeo. Same cowboys.....

And ask Bish how it works and how its legal. Don't let him wave his magic hands and gaslight you in his response.

It's a Ponzi/pyramid Scheme. Unsustainable commissions made of people referring our people.....The emperor is still wearing no clothes.....

- f. Within the contents of e-mail the claimant included a 'meme' portraying two astronauts floating in space overlooking Earth. A vertical list containing names of the respondent's employees (former and current), including it's two key witnesses, appear on the astronaut on the right hand side of the image. This astronaut appears to be holding the other astronaut at gunpoint with the text *'always has been'* appears.
- g. Additionally, we [the Respondent's Representatives] are informed that the claimant has attempted to contact two home

improvement companies which the respondent has dealings with, in order to attempt to impact John Cohen's witness evidence ahead of the hearing.

- h. It was acknowledged that the claimant is a party litigant. However, the claimant's status does not excuse or mitigate the consequences of his conduct. The e-mail in question is plainly offensive and threatening in tone, and is intended to bring the respondent, and its witnesses' reputations, internally and externally into serious disrepute. We [the Respondent's Representatives] are informed that one of the witnesses feels alarmed as a result, and one has indicated that they live in Glasgow, where the claimant also resides, and they feel 'intimidated' by the claimant due to his unpredictable behaviour. Initially,

- 160. While in isolation the LinkedIn message may not be objectionable, it was submitted that the LinkedIn exchange, together with the e-mail, demonstrates a pattern of conduct by the claimant in an attempt to intimidate and harass the respondent's two witnesses and/or any other potential witnesses that maybe called to provide evidence.
- 161. We [the Respondent's Representatives] had been informed that the recipients of the exchanges (particularly the two witnesses) are deeply concerned and distressed by the claimant's actions. Such distress is not incidental; it is a foreseeable consequence of communications framed in this matter. Although the two witnesses are able to attend the final hearing, the Respondent's Representatives had been informed that they are hesitant to do so in light of the claimant's conduct and the Respondent's Representatives are concerned about the affect such conduct may have on the evidence the witnesses provide."
- 162. In the context of the above the respondent's representative submitted the claimant's actions amounted to an attempt to intimidate all of the respondent's witnesses and would, if allowed to continue, and had already, prejudiced the respondent's ability to have a fair trial.
- 163. In reliance upon **Wong v. Royal Mail Group Limited** [2500163/2022] the respondent's representative sought strike-out of the claim in terms of Rule 38(1)(b) of the Employment Tribunal Procedural Rules 2024, that is to say on the ground that the manner in which the proceedings have been conducted by the claimant has been scandalous, unreasonable or vexatious. In **Jones v. Wallop Industries Ltd** ET case no. 17182/81 the claimant claimed that he had been unfairly selected for redundancy and, to backup his claim, alleged fraud, mismanagement, misrepresentation, criminal conspiracy, intimidation

and 'other torts' (delicts) against the employer. That the Tribunal in that case found that the claimant's acting's, in causing the respondent company and a number of individuals named in the proceedings, as much inconvenience, distress, embarrassment and expense as possible, constituted acting in the conduct of proceedings in a largely scandalous and/or vexatious manner, and it struck out the claim on that basis.

164. The Tribunal considered that there are parallels between the actings of the claimant in that case and the actings of the claimant in the instant case. The Tribunal considered that the content of the LinkedIn communication when taken together with the e-mail sent to a large number of employees, including already identified witnesses and the meme, when taken together and objectively construed, are offensive in their terms, and threatening in tone, and objectively construed fall to be regarded as having a purpose of bringing the reputations of the respondent and of its witnesses, both internally and externally, into disrepute.
165. The terms of the communications are consistent with the effect which the respondent's representatives communicate, in their application and submissions, their witnesses have experienced namely, that they feel alarmed and intimidated by the claimant's unpredictable behaviour and have caused two of the respondent's witnesses to be hesitant in attending at a final hearing to give their evidence.
166. In ***ET Marier Limited v. Robertson*** [1974] ICR 72 NIRC a vexatious claim or defence was described as one that is not pursued with the expectation of success but to harass the other side, or out of some improper motive. The term is also used more widely to include anything that is an abuse of process. In ***Attorney General v. Barker*** [2000] 1FLR 759, CBD (Civ) (Div), Lord Chief Justice Bingham said that the hallmark of a vexatious proceeding is that it has 'little or no basis' (or at least no discernible basis); that whatever the intention of proceeding may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and that it involves an abuse of process of the court meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process.
167. Conduct of proceedings are unreasonable in the context of Rule 38(1)(b) if they are found to sit outside the 'ordinary unreasonable conduct of proceedings' (***Cabo Concepts Limited v. MGA Entertainment (UK) Limited & Another*** [2022] EWHC 2024 (Pat)). The Tribunal noted that in his oral submissions in opposition to the respondent's application the claimant stated that his purpose in sending the objected to communication was '*I wanted everyone to know the truth before they were made redundant. I wanted people to know I was telling the truth because what the respondent*

had said about me was character assassination' and then he described his pursuit of the current proceedings in the following terms – 'The suggestion that I am here to get a payout is not true. I went into this process with my eyes open. I expect that the odds are very low of me having any chance of recovering compensation. I am here mostly for damage to my reputation being repaired.'

168. It is a not infrequently encountered misconception that the purpose of proceedings before the Employment Tribunal in cases of complaints of unfair dismissal for reason of misconduct, is to provide a platform to claimants on which their asserted non-guilt of the misconduct in question can be vindicated. In investigating and determining such complaints the Tribunal has no jurisdiction to re-run the internal disciplinary proceedings and/or to substitute his own view and assessment of the evidence before the employer in the internal proceedings for that of the employer. Were it to do so it would err in law. Rather, the Tribunal's jurisdiction in such a case extends to determining on the preponderance of the evidence and on the balance of probabilities two matters:
- a. Firstly, what as a matter of fact on the evidence presented at an evidential hearing, what was the reason, or if more than one the principle reason for the claimant's dismissal including, in the instant case whether, in particular, as is asserted by the claimant, the reason was the fact that the claimant had made a qualifying and protected disclosure which, in the event of their so determining would result in the dismissal falling to be regarded as automatically unfair in terms of section 103A of the Employment Rights Act; and
 - b. Secondly, let it be assumed that the Tribunal were to find that the reason for dismissal was one of the potentially fair reasons appearing in section 98 of the ERA, to then go on to determine whether, in so dismissing the claimant for that potentially fair reason, the respondent falls to be regarded as having acted reasonably or unreasonably in treating the established reason for dismissal as a sufficient reason in all the circumstances of the case and in terms of section 98(4) of the ERA and accordingly, whether the dismissal falls to be regarded as fair or unfair.
169. In essence, if a potentially fair reason is found to be established, the Tribunal will conduct a judicial review of the reasonableness of the respondent's actings. [a mixed question of fact and law].

170. In the case of a section 103A complaint of automatic unfair dismissal, the burden of proof sits with the claimant to prove the particular reason asserted. In the case of a section 95 and 98 ERA dismissal, the burden of proof sits with the respondent in respect of establishing the reason for dismissal and the burden of proof in respect of the reasonableness of the respondent's conduct in dismissing is neutral.
171. To illustrate the point it is possible, depending upon the circumstances for it to be subsequently established that an individual accused of misconduct in fact did not commit that misconduct but that an employer's dismissal of an employee on that ground nevertheless falls to be regarded as fair in terms of section 98(4) of the ERA. It is equally possible for the dismissal of an individual who did in fact engage in the misconduct for which he was dismissed, to nevertheless, be found to be unfair on the grounds, for example, that the respondent did not hold a genuine belief in the claimant's guilt in respect of that conduct, and/or even if holding a genuine belief did not have reasonable grounds upon which to form that view at the material time and/or has failed to carry out a sufficient investigation in the circumstances.
172. For a party to knowingly present or knowingly persist in the conduct of litigation before the Tribunal which has at its core the fundamental issue of what was the reason, or if more than one the principle reason for dismissal or a detriment other than dismissal, in a manner which goes beyond the bounds of the above, is conduct which has the potential to constitute an abuse of process and may fall within the terms of Rule 38(1)(b) awakening the Tribunal's discretion to strike the claim out.
173. On the face of the documentary evidence relied upon and of the oral submissions made by the claimant, the Tribunal considered that the conduct which is evidenced by them has the potential to amount to an abuse of process and if persisted in the face of direction to desist is likely, because of the affect which it is said to have already had and potential future effect on witnesses' willingness to give evidence and/or on the quality and effect of the evidence which they will give, to result in a circumstance where it is no longer possible to have a fair hearing in respect of the claim and thus conduct likely to meet the requirements of Rule 38(1)(c).
174. The authorities make clear that Tribunals should be reluctant to strike out claims of discrimination and/or of "whistleblowing", that is complaints of having been dismissed and/or having suffered detriment other than dismissal on the asserted grounds of having made a qualifying protected disclosure, including not least, claims which are pursued by party litigants, except in the most obvious and plainest cases. That recommended approach is based upon the fact that discrimination cases are generally fact sensitive, and their proper determination is always vital in our preroristic society (*Anyanwu v.*

Southbank Students' Union [2001] IRLR 305 House of Lords per Lord Steyn at paragraph 24; and again per Lord Hope of Craighead at paragraph 37 –

“.....discrimination issues of a the kind which have been raised in this case should, as a general rule, be decided only after hearing the evidence. The questions of law that have to be determined are often highly fact-sensitive; and the risk of injustice is minimised if the answers to these questions are deferred until all the facts are out. The Tribunal can then base it's decision on it's findings in fact rather than on assumptions as to what the claimant may be able to establish if given an opportunity to lead evidence.”

175. In **Ezsias v. North Glamorgan NHS Trust** [2007] IRLR 603 the following remarks are recorded in paragraph 29:-

“It seems to me that on any basis there is a crucial core of disputed fact in this case that is not susceptible to determination otherwise than hearing and evaluating the evidence.”

176. The above authorities set high the bar for striking out complaints of discrimination/whistleblowing. The higher courts have recognised however that it is not impossible to do so. In **Ukegheson v. Haringay London Borough Council** [2015] ICR 1285, it was clarified that there are no formal categories where striking out is not permitted at all. It is therefore competent to strike-out a claim of discrimination a point reiterated in **Ahir v. British Airways Plc** [2017] EWCA Civ 1392 by Elias LJ who stated:

“Employment Tribunals should not be deterred from striking out claims including discrimination claims, which involve a dispute of fact, if they are satisfied that there is indeed no reasonable prospect of the facts necessary to liability being established, and also provided they are keenly aware of the danger of reaching such a conclusion in circumstances where the full evidence has not been heard and explored, perhaps particularly in a discrimination context.”

177. The above authorities, although regarded as having more general application, are decisions which focus largely on engagement of Rule 38(1)(a) and in particular the appropriate time and circumstances in which to assess the question of whether a claim “has no reasonable prospect of success. Beyond the general caution and recommendation of reluctance, they do not directly cut across the Tribunal’s power to exercise it’s discretion to strike-out a claim in circumstances where it is satisfied that the conduct of a party amounts to an abuse of process and/or has had the effect of it being no longer possible to have a fair hearing in respect of the claim.

178. Had the Tribunal been able to be satisfied, at Open Preliminary Hearing, that the complained of conduct of the claimant had been conceived and pursued by him deliberately in the knowledge that it had the potential to affect witnesses in the manner in which the respondent indicates it has already done or with the intent of subjecting the respondent to inconvenience, harassment and expense out of all proportions to any gain likely to accrue to him, or in the knowledge that it amounted to use of the court process for a purpose, or in a way, which is significantly different from the ordinary proper use of the court process, the Tribunal would have struck out the claim, for those reasons, in terms of Rule 38(1)(b).
179. On consideration of the documentary evidence presented and of the oral submissions made, the Tribunal was unable to be satisfied, at this junction in proceedings, that the claimant's conduct of proceedings was, so intentional or so knowingly motivated.
180. The Tribunal considered that it was equally possible that the conduct fell to be regarded as misconceived and, recognising that otherwise there existed between parties a core of disputed fact relating to the key issue of what was the reason, or if more than one the principle reason, for the respondent's admitted dismissal of the claimant, and those disputed facts being matters which properly fell to be determined at an evidential hearing, the Tribunal, in the exercise of its discretion, declined to strike-out the claim, at this juncture in proceedings, and accordingly refuses the respondent's application for Strike-Out.
181. The claimant was not in a position to and did not challenge the respondent's assertion that his conduct had already had an impact on each of the two identified witnesses, and while a lack of intention on the claimant's part would not necessarily have been sufficient to prevent a strike-out where the effects so caused were such as to result in the Tribunal considering that it was no longer possible to have a fair hearing in respect of the claimant's claims, it could not be satisfied on the documentary evidence before it and on the submissions made that the contingency set out in Rule 38(1)(e) had occurred.
182. In so declining to strike-out the claim at this juncture in proceedings, the Tribunal Orders the claimant, for the reasons set out above, to desist forthwith from engaging in such conduct including, in particular, making direct contact with the respondent's witnesses and from mis-utilising the Employment Tribunal proceedings as a platform on and from which to pursue a wider campaign of allegation against the respondent or its current or former employees.
183. The Tribunal records that a re-iteration of or continuation of the conduct complained of and described in this Judgment, in the face of the Tribunal's

direction to desist, is likely to be regarded by the Tribunal as intentional on the part of the claimant and at risk of being regarded as an abuse of process.

184. The Tribunal further makes clear that the fact that it has declined, at this juncture in proceedings, to strike out the claim does not constitute an approval or justification of the prior conduct complained of which conduct will remain capable of being referred to and relied upon in the context of any subsequent applications made in the case.

Date sent to Parties

21 May 2026