EMPLOYMENT TRIBUNALS

Claimant:	**F**
Respondent:	**Met Office for and on behalf of the Secretary of State for Science, Innovation and Technology of the United Kingdom of Great Britain and Northern Ireland.**
Heard at:	Exeter Employment Tribunal
On:	19 June 2026
Before:	Employment Judge Volkmer

Representation

Claimant:	in person
Respondent:	Mr Isaacs, counsel

RESERVED JUDGMENT

1. The Second, Third and Fourth Claims are struck out. The Claimant is debarred from pursuing remedy in relation to the First Claim, save in respect of injury to feelings.

2. The liability hearing listed for 6 July 2026 is vacated.

3. The remedy hearing listed to take place on 1 September 2026 for five days is reduced to a two day hearing **on 1 and 2 September 2026** at **Exeter Employment Tribunal, 2nd Floor, Keble House, Southernhay Gardens, Exeter, EX1 1NT** to deal with injury to feelings in relation to the First Claim only.

REASONS

Adjustments

1. On 16 June 2026, the Claimant made an application for reasonable adjustments for the hearing which would involve the Respondent having to make all submissions in writing. These would then be read out by the judge. The Respondent objected to this. However, did provide a summary in writing of its response to the Claimant's skeleton in writing. Due to the protocol whereby the parties do not write directly to one another, but write to the Tribunal, the time it took for the correspondence to be forwarded to the Respondent and for them to respond, meant that it was not possible to forward their response to the Claimant. It was printed and the Claimant was given time to consider it at the beginning of the hearing. The Claimant explained in the hearing that in the previous liability hearing cross examination questions were read out by the judge. The adjustment was said to be akin to this and necessary for the Claimant's mental health.

2. I decided that I was not willing to make an adjustment which would prevent the Respondent from making oral submissions at the hearing. This would be a significant incursion in the Respondent's ability to participate in this and future hearings, if they could not address the Tribunal orally at all. I had reviewed the most recent medical evidence provided to the Tribunal in relation to the Claimant's capacity, dated 10 October 2025. This considered which adjustments needed to be made for the Claimant and had not identified this as one which was necessary. In the circumstances I considered it was not reasonable to make this adjustment. It was not supported by the medical advice and would not put the parties on an equal footing because the Respondent would be put to disadvantage if restricted in this way.

3. I note that during the hearing, the Claimant commented that Mr Isaacs delivery of his submissions on behalf of the Respondent was gentle and was better for her than previous hearings had been.

Procedural Background

4. The Claimant was employed by the Respondent as a Trainee Meteorologist between November 2018 and May 2020.

5. There are four claims in relation to which the following hearings are listed:

    a. the "First Claim", with case number 1403005/2020 related to the decision by the Respondent to dismiss the Claimant from employment because she had not yet passed a test related to her training. This was heard by EJ Housego, Ms Clarke and Mr Sleeth on 13 to 16 September 2021, who upheld the Claimant's complaint of disability discrimination in relation to the dismissal. Anonymised reasons were sent to the parties on 12 October 2021 (page 5 RB). The matter of remedy remains outstanding for the First Claim;

    b. the "Second Claim" (case number 1403640/2023), "Third Claim" (case number 1401049/2024) and "Fourth Claim" (case number 1400245/2025), which relate to the Respondent refusing to progress job applications made by the Claimant for other roles at the Respondent, in relation to which a liability hearing is listed for ten days on 6 to 17 July 2026;

c. a remedy hearing for all four claims has been listed for five days on 1,2,3,4 and 7 September 2026.

6. The Respondent provided a hearing bundle of 458 pages. Page references to this bundle will be referred to in the format "page X RB". The Claimant provided a hearing bundle of 172 pages. Page references to this bundle will be referred to in the format "page X CB"

7. Following the liability hearing in September 2021 a remedy hearing was listed for 29 November 2021 before the same panel as had determined remedy. This was adjourned on the basis that there were discussions between the parties regarding the Respondent re-engaging the Claimant (page 117 RB).

8. The Claimant served a schedule of loss dated 25 November 2021 seeking a sum in excess of £2.7m (before grossing up) (page 441 RB).

9. A further case management hearing took place before EJ Gray 20 June 2022, the case management order resulting from this hearing was sent to the parties on 24 June 2022. A remedy hearing was listed for three days from 6 to 9 February 2023. The Claimant was ordered to provide an updated schedule of loss and any additional disclosure and witness evidence relied on in relation to remedy by 31 August 2022 (page 120 RB).

10. As part of the ongoing re-engagement discussions, the parties jointly obtained a medical report from Dr Badenhorst regarding the Claimant's fitness to return to work. However, the Claimant refused to disclose this to the Respondent on the basis that she considered it contained inaccurate information. As a result, the Respondent withdrew from discussions regarding the Claimant's re-engagement. Later the Claimant sent a heavily redacted copy of it to the Respondent. The provider of that report then said that it did not accept authorship of it because of the redactions. The opinion of that report was that the Claimant was presently not fit to return to work, and it did not give a prognosis as to when that might be possible. I consider that it is clear from the documents that the Claimant disagreed with both the factual background recorded in the report and the clinical perspective of Dr Badenhorst (see pages 124 to 133 of CB is correspondence including the Claimant's complaint to the Grespi clinic in relation to the contents of the report).

11. The Claimant then obtained her own report from Dr Sperber, which is dated 6 September 2022. It is understood that report stated that the Claimant was able to return to work, with adjustments.

12. The Claimant's updated schedule of loss dated 14 September 2022 (page 445 RB) contained a financial claim based on career loss: the Claimant stated that "*due to my mental health deterioration and lack of current employment, I will not be able to obtain future employment*" (page 449 RB). The Schedule of Loss included future financial losses spanning a 30 year career at the Respondent, with total financial

losses of just over £2m (page 452 RB). Damages for personal injury were also included in the Schedule of Loss (page 452 RB).

13. A further case management hearing took place before EJ Housego on 16 December 2022. At this hearing, EJ Housego expressed the view that full disclosure of the Dr Badenhorst report was not necessary because it was unlikely that the Claimant would say that she was precluded from looking for work by reason of illness and because there was no personal injury claim (page 133 RB). It is unclear to me how this view was reached in light of the Schedule of Loss which had been served by the Claimant.

14. The remedy hearing listed for 6 to 8 February 2023 was postponed on the grounds of the Claimant's ill health and re-listed for 2 and 3 August 2023.

15. On 23 May 2023 the Claimant's solicitor notified the Respondent that they could not continue acting for the Claimant until she had had a capacity assessment (page 285 RB).

16. The Second Claim was issued on 30 May 2023 (page 28 RB). This related to the Respondent's failure to re-engage the Claimant and its failure to progress job applications she had made to the Respondent.

17. The remedy hearing listed for 2 and 3 August 2023 was postponed on the Respondent's application based on the information it had received regarding the Claimant's capacity to litigate and the fact that she had not complied with the case management orders required to prepare for the hearing (page 141 RB). Instead, this was converted to a case management hearing before EJ Housego. Based on medical evidence before him, including a report by Dr Adelman which concluded that the Claimant did not have capacity to litigate, EJ Housego determined that the Claimant did not have capacity to litigate (page 150 RB). EJ Housego commented as follows (page 151).

    "*The matters to be decided at the remedy hearing are complex. It is not a matter of assessing injury to feelings and compensation for a period of unemployment. Given [F's] previous mental health problems there is likely to be considerable evidence and argument about causation of mental health problems subsequent to her dismissal. In summary there appear to be two ends to the spectrum of possibility. Had there been no discrimination would [F] gone on to have an uneventful career at the Met Office? Or would her mental fragility have very likely led to an early mental health crisis and departure? Is the impact on [F] the responsibility of the Met Office because it seems that their actions precipitated it (the "eggshell skull" principle)? Or is the impact on her largely because of pre-existing fragility and to that extent not the responsibility of the Met Office? Doubtless Counsel for both parties will develop arguments fully, and these are but examples of possible contentions. All this makes the need for a litgation (sic) friend the greater.*" [16]

18. A litigation friend for the Claimant was not found. On 9 January 2024, without any up-dated medical evidence, EJ Housego, of his own volition, reconsidered his decision and revoked his earlier case management order relating to capacity (page 178).

19. The Third Claim was issued on 10 February 2024 (page 57 RB). This related to further failures by the Respondent to progress job applications made by the Claimant.

20. On 1 March 2024 a further case management hearing took place before EJ Housego. He vacated the remedy hearing which had been listed for 29 and 30 April 2024, consolidated the Second and Third Claims and listed them for a five day liability hearing starting on 21 October 2024 (page 184 RB). It was agreed at that hearing that a further medical expert report would be obtained jointly. EJ Housego recorded that "*The Claimant did not wish the existing medical reports to be disclosed to the Respondent, save heavily redacted. This was because she felt that they contained a lot of personal historical material which was not relevant to the present claim. The Respondent felt that the extent of the redactions meant that the remainder of the reports might not be seen in proper context. Very sensibly, the Respondent decided not to pursue this issue but to offer to pay for a new report. This has the advantage of being up to date, so that it can also be used in the two new claims."* (page 185). The Claimant's position is that the Respondent had conceded that she did not need to provide medical disclosure. The Respondent disputes this saying that this was a discussion regarding the commission of a new expert report, but the Claimant was at all times under a duty to disclose relevant documents (which includes medical evidence).

21. In order for this medical report to be prepared, the Respondent provided the Claimant with consent forms for the disclosure of medical records on 7 May 2024 saying "*Please find attached a consent form for you to complete and send to your GP, and any other healthcare professional who care you have been under, for the release of your medical records to Foot Anstey LLP so that these can then be sent with the joint letter of instruction…Given that your schedule of loss indicates that you are pursuing substantial financial compensation, there needs to be full disclosure of this information to ensure that the Respondent fully understands the position and is able to respond as appropriate*" (page 297 RB). The Claimant later indicated on 20 May 2024 that she had requested medical records for herself. The Respondent's solicitors re-sent the consent forms and again requested consent for medical records to be sent directly to the Respondent's solicitors (page 294 RB).

22. A further case management hearing took place before EJ Housego on 24 May 2024, with the case management order (sent to the parties on 31 May 2024) recording that "*The Claimant consents to the disclosure of her GP records* ***<u>to the Respondent</u>****, redacted by her solicitor to exclude any irrelevant matter."* (page 188 RB) [emphasis added].

23. The Claimant did not provide such GP records to the Respondent. There was a further case management hearing before EJ Housego on 26 June 2024 to resolve a dispute in relation to the instructions to the expert providing the new joint medical expert report (page 189 RB). EJ Housego ordered that the new expert would not have sight of the Dr Badenhorst report and that references in the Claimant's GP records to that report would be redacted by "the solicitor***s***" [emphasis added] (page 189 RB). EJ Housego records the reason for this being "*It should not be possible for the Claimant to think that the new report was coloured by Dr Badenhorst's opinion."*

(page 189 RB). There is nothing in this order which indicates that there was an acceptance that the Respondent would not have sight of the medical records being provided to the expert.

24. The Respondent's solicitors then wrote to the Claimant's new solicitor on 3 July 2024 requesting a copy of the Claimant's medical records (page 316 RB). The Claimant's solicitors responded on 8 July 2024 saying that their understand was that the Claimant's medical records were not to be shared with the Respondent (page 321 RB). The Respondent responded on 10 July 2024 explaining that this was not agreed by them and that the usual practice when instructing a joint expert was that both parties would see the information that was provided to the medical expert, otherwise how could the Respondent assess the report and ask follow up questions (page 321 RB).

25. Whilst the Respondent did not agree the position, they sought an undertaking from the Claimant's solicitors that they had verified that they had a complete copy of the Claimant's medical records and that is what would be supplied to the expert (page 318 RB). That undertaking was not given before those solicitors ceased to act for the Claimant (pages 409 and 414 RB).

26. Dr Slinn produced an expert report in August 2024 (page 63 CB). It remains the position that the Respondent has not had sight of the medical records which were produced to Dr Slinn. It is clear from the documents that the Claimant's solicitors received a copy of medical records from the Claimant and passed them on to Dr Slinn rather than receiving them directly from the Claimant's GP before passing them on (pages 320, 409 and 421 RB).

27. A further case management hearing took place on 12 August 2024 before EJ Housego. In addition to the liability hearing listed for five days from 21 to 25 October 2024 in relation to the Second and Third Claims, a ten day remedy hearing was listed to start on 14 April 2025 (page 198 RB).

28. Following this hearing, the barrister who had been acting for the Claimant ceased to act and she became a litigant in person. The Respondent notified the Tribunal that it had been unable to make contact with the Claimant, and the case was not ready to proceed, they also raised concerns regarding the Claimant's welfare (page 203 RB). On 16 October 2024 REJ Pirani vacated the five day liability hearing which had been due to commence on 21 October 2025 and converted it to a case management hearing at which various case management orders were made (page 209 RB).

29. The Claimant alleged in correspondence to the Tribunal that the Respondent's solicitors had threatened her and made death threats. Following this, on 7 November 2024, REJ Pirani (although stating that this account of the correspondence was incorrect) ordered that the parties could comply with case management orders "*by sending in the correspondence to the Employment Tribunal. That correspondence can then be forwarded to the other party.*" (page 213 RB). That protocol whereby the parties sent correspondence to the Tribunal, and the Tribunal acted as post-box by forwarding correspondence to the other party has been in place since then.

30. At the end of 2024, EJ Housego retired. There was a further case management hearing before EJ Roper in December 2024 during which and after which the Claimant became very distressed and expressed suicidal ideation.

31. The case came before EJ Smail on 14 February 2025 who stayed the claim on the basis "*that the Claimant became repeatedly very upset at the hearing. She made multiple unlikely claims that the Respondent was intent on doing her harm. She made multiple references to an intention to commit suicide.*" (page 223 RB). All of the claims were stayed pending an assessment of the Claimant's capacity.

32. The Claimant obtained a medical assessment of her capacity to litigate which concluded that she did have such capacity. On 2 December 2025 the case came before me. I determined, based on the medical evidence, that the Claimant did have capacity to litigate (page 231 RB). An accelerated timetable was put in place on the basis that it would be detrimental to the Claimant's mental health for there to be further delay in concluding the case. A liability hearing in relation to Second, Third and Fourth Claims was listed for ten days starting on 6 July 2026. A remedy hearing was listed for all of the claims for five days starting on 1 September 2026. Further case management orders were made to prepare for the final hearing (pages 232 to 234 RB).

33. I made an order on 6 January 2026; due to an administrative error this was not sent to the parties until 20 January 2026. This stated that general disclosure in relation to the Fourth Claim should take place by 29 January 2026 (page 234 RB). On 26 January 2026, an order was sent to the parties delaying this deadline until 2 March 2026 (not on the file).

34. The Respondent applied for the liability hearing to be postponed because one of the main witnesses in the case was undergoing cancer treatment and not be well enough to attend the hearing. A case management hearing took place on 24 April 2026 before me to consider this application and others made by the Claimant. This application was opposed by the Claimant on the basis that it would cause damage to her mental health if there was a delay in concluding the case. Normally there would be a strong presumption in favour of postponement because of the unavailability of a key witness for a good reason such as this. However, having weighed the prejudice, I dismissed the Respondent's application, and decided the hearing would remain as listed (page 239 RB).

35. I should clarify paragraph 33 of the order resulting from this hearing in which I stated that "*It is not clear whether there is a need for medical evidence in relation to remedy.*" (page 243 RB). This sentence is unclear. This was intended to refer to the fact that the parties were not in agreement regarding whether there would be a further joint expert medical report or not.

36. I made an order at that hearing that the Claimant should disclose all documents relevant to mitigation by 22 May 2026, as well as an updated schedule of loss by the same date (page 243 RB).

37. It was at this hearing in April 2026 that I became aware that there had still not been a disclosure to the Respondent of an unredacted copy of the Dr Badenhorst report

nor had the Respondent ever had sight of a full copy of the Claimant's medical records. During the discussions on this topic, the Claimant was adamant they would not be disclosed. She became extremely distressed at times hiding under the table, at times shouting. I recorded the following discussions with the parties at that hearing (pages 244 and 245 RB).

> "*42. I explained to the Claimant that I was concerned about fairness if the Claimant was able to select which medical records were provided. The report of Dr Badenhorst was disputed by the Claimant but considered to be relevant by the Respondent. On its face it went to relevant questions about the Claimants' fitness to return to work during the relevant periods. I explained to the Claimant that I was not making a determination about this today, but:*
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> > *42.1 if she was unwilling to disclose the unredacted report of Dr Badenhorst, this would have to be resolved as an issue between the parties. The case was currently on an expedited timetable because of the Claimant's need for the matter to be resolved quickly. However, if there continued to be a dispute in relation to this, it would need to be resolved by the Tribunal. This would make it very likely that the remedy hearing in September would need to be postponed in order to allow for any medical expert to review the medical records after it had been determined which medical records should be provided;*
> >
> > *42.2. I was concerned about the fairness, as between the parties, of circumstances where only some relevant medical records were disclosed. The starting position in the Tribunal was that all relevant documents must be disclosed by both parties. As raised by the Tribunal, even with other medical evidence before the Tribunal, if the Respondent only had access to those documents picked by the Claimant, rather than the whole picture, this could affect the ability for the Respondent to have a fair hearing;*
> >
> > *42.3 I explained to the Claimant that it was open to her to challenge the factual accuracy of Dr Badenhorst's report and make points regarding that if the document was disclosed in order to address her concerns about the document*."

38. We discussed whether, given the Claimant's position was that she objected to irrelevant factual background, which was included in the Badenhorst report, whether the Respondent could have sight of the unredacted version to check this. Then if they agreed, the report could remain redacted in the hearing bundle. The Claimant's position remained that she was not willing for the Respondent to see the unredacted report at all.

39. Whilst I had ordered disclosure of medical records by 26 June 2026, it became clear to me on reflection, that given the accelerated timetable, this would not leave sufficient time to deal with the matter if the Claimant continued to refuse to give disclosure. I therefore sent an order to the parties, which I have checked and was sent out to both the Claimant's and the Respondent's contact email addresses on 13 May 2026, although the Claimant stated in the present hearing that she had not

received it. However, it is clear that even if she did not receive it on first sending it was forwarded again as part of other correspondence which she replied to on 19 May 2026 which was before the relevant deadline (pages 254 to 257 RB).

40. My order of 13 May 2026 stated the following (page 250 RB) "*In relation to the disclosure of the Claimant's medical records, the judge would like to re-emphasise the discussions at the previous hearing. The judge is concerned that without full disclosure, it may not be possible for there to be a fair hearing. If the Claimant declines to disclose her full medical records, the judge will consider listing a hearing to consider whether to strike out the Second, Third and Fourth claims and some of the heads of remedy in relation to the First Claim, insofar as the medical records are relevant to them. The Claimant must confirm by **25 May 2026**, whether she intends to give the Respondent full disclosure of her medical records, so that a further preliminary hearing can be arranged in good time before the currently listed liability hearing for the Second, Third and Fourth claims*."

41. No correspondence had been received from the Claimant by 28 May 2026 and I therefore listed a strike out hearing to take place on 19 June 2026 (the present hearing). This order was made on 28 May 2026 and sent to the parties on 29 May 2026 (page 261 RB).

42. On 28 May 2026 at 17.27, the Claimant sent an email to the Tribunal which was received after I had sent the directions for the strike out hearing but before this had been sent out to the party by the Tribunal staff. This stated the following.

"*I respectfully maintain that disclosure of the unredacted Badenhorst report is neither necessary nor proportionate in the circumstances. The Respondent has previously stated that Dr Badenhorst himself indicated that the report should not be relied upon in its redacted form, which is the only form previously disclosed. Further, the report contains factual inaccuracies which remain uncorrected despite concerns being raised. In those circumstances, I do not consider it appropriate or fair for the Respondent to rely upon the report as a basis for assessing my fitness to work or credibility. I am also concerned by the circumstances in which the Badenhorst report was prepared. The referral email referred to prior discussions having taken place with the company, yet those discussions do not appear to have been disclosed in writing. The written material provided to Dr Badenhorst also contained an inaccurate version of events and, importantly, the relevant Tribunal judgment was not provided to him. Dr Badenhorst in turn appears to have accepted and repeated the Respondent's account almost verbatim within his report, despite aspects of that account being inconsistent with the Tribunal's findings, thereby giving disputed allegations an appearance of medical legitimacy without proper independent verification.*

In addition, the Respondent was provided at the relevant time with an Occupational Health report addressing my fitness for work, which they have already seen in full and which was specifically prepared for employment-related purposes. There are also several more recent medical records and reports available. The Badenhorst report is now historic, disputed, and of limited evidential weight compared to contemporaneous occupational health evidence and more recent medical evidence.

I also remain concerned that large parts of the unredacted report contain highly sensitive and private information relating to my childhood and personal history, where I myself was the primary source of the information provided. I do not consider those deeply personal matters to be relevant to the issues the Tribunal must determine regarding my capacity to work during the relevant periods. Disclosure of such material to the Respondent would therefore amount to a disproportionate interference with my Article 8 privacy rights, particularly where less intrusive and more relevant medical evidence already exists.

Further, many of the factual inaccuracies I raised related to those childhood matters. However, when concerns regarding factual inaccuracies were raised, Dr Badenhorst responded by asserting that I merely disagreed with his opinion, despite not first asking which specific facts were inaccurate. At that stage, I had not yet identified the individual inaccuracies, only stated that factual errors existed. I found this response dismissive and inappropriate, as it conflated factual accuracy with professional opinion and failed to engage with legitimate concerns regarding the accuracy of the report. A medical professional acting in accordance with professional and ethical standards would ordinarily seek to ensure that factual information within a report is accurate and would properly consider concerns raised regarding inaccuracies. This is consistent with principles contained within GMC Good Medical Practice and HCPC standards relating to accuracy, communication, and professional conduct.

The Tribunal's disclosure obligations require disclosure of documents which are relevant and necessary for the fair disposal of proceedings; they do not automatically justify unrestricted disclosure of all private medical history irrespective of relevance or proportionality. Given the existence of alternative medical evidence, the disputed factual accuracy of the report, the age of the report, the circumstances in which it was prepared, and the highly sensitive nature of the information contained within it, I do not consider disclosure of the unredacted report to be necessary to ensure fairness between the parties." (not in the bundle)

43. The Claimant stated the following in an email to the Tribunal on 29 May 2026.

"*I wish to clarify that I have already contacted the Tribunal regarding the issue of disclosure of my medical notes.* ***I explained that I would provide the medical records once they had been corrected, which is my right****. I also provided a detailed explanation regarding the Badenhorst report and the surrounding circumstances in a previous email. I would therefore ask that this correspondence be consulted, as I spent considerable time explaining the situation fully.*

I would also ask that consideration be given to the most recent letter from my psychiatrist, Dr O'Daly, which I requested be included within the bundle. That letter specifically addresses concerns regarding the Respondent's misinterpretation of already prepared medical reports and provides relevant professional context in relation to those concerns. I would also like to highlight that I have already been transparent regarding my medical information. The Respondent already has access to multiple medical reports, and my medical notes had previously been provided to them prior to them contacting Dr Badenhorst.

My concern is that there is a history of the Respondent using information from my medical records to identify matters that are known to cause me harm and then engaging in conduct connected to those vulnerabilities, whilst at the same time selectively interpreting or taking aspects of reports out of context from the report as a whole (as mentioned specifically by Dr O'Daly). Previously, the Respondent agreed that they would not seek access to my full medical notes after I raised concerns about the harm that unrestricted access could cause. They now appear to have reversed that position without providing any explanation as to why.

Importantly, the medical professionals responsible for preparing the expert medical reports have already had access to my full medical records in forming their professional opinions. I therefore do not understand the necessity for legal representatives or employees of the Met Office, who are not medical professionals, to have unrestricted access to my complete medical history, particularly given the concerns I have already raised regarding misuse and harm." (not in the bundle) [emphasis added]

44. The Claimant's position did not initially change in the skeleton she submitted to the Tribunal and when asked during the hearing as to what she was willing to disclose. During the hearing the Claimant handed up further written submissions in which she said that she could disclose a redacted GP record with her GP or another independent third party being able to verify that the redactions related to the Badenhorst report. She remains unwilling to disclose the Badenhorst report.

45. The Claimant had not yet submitted an updated schedule of loss (as she had been required to do by 22 May 2026) on the basis that she had not been well enough to do so. The Claimant stated in the present hearing that her Schedule of Loss remained largely the same, and any updates would be minor.

Strike Out

46. Rule 38 of the Employment Tribunal Rules of Procedure 2024 (the "Tribunal Rules") sets out the following in relation to strike 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."

47. Although the following cases were decided in relation to previous versions of the Tribunal Rules, they remain applicable to the current rules in relation to strike out.

48. The Court of Appeal found in *Evans and anor v Commissioner of Police of the Metropolis 1993 ICR 151, CA*, that the power to strike out a claim where it has not been actively pursued must be exercised in accordance with the principles set out in *Birkett v James 1978 AC 297, HL*. This in turn found that it is only appropriate to strike out in circumstances where: (i) the Claimant's default has been "intentional and contumelious"; or (ii) where there has been inordinate and inexcusable delay which either gives rise to a substantial risk that it is not possible to have a fair resolution of the issues or has caused, or is likely to cause or to have caused, serious prejudice to the Respondent.

49. His Honour Judge Tayler stated the following in *Leeks v University College London Hospitals NHS Foundation Trust 2024 EAT 134*.

"*20. It is long established, and well known, that the question of whether a fair trial remains possible is generally relevant to an application for strike out pursuant to Rule 38(1)(b)(c) and (d) ETR as well as being expressly provided for by Rule 37(1)(e) ETR. That begs the question of why the rule provides specific grounds for strike out if a claim will generally not be struck out if a fair trial is possible – why not only have rule 37(1)(e) ETR? The answer may be that where there is conduct that falls within Rule 38(1)(b)(c) and/or (d) ETR the likelihood of recurrence is relevant to the possibility of a fair trial. A claim could be struck out under Rule 37(1)(e) ETR even where the party against whom the application is made has done nothing wrong. The ill health of a party could mean that "it is no longer possible to have a fair hearing in respect of the claim or response" although a party cannot be criticised for being unwell. Where a party has conducted proceedings in a manner that has been scandalous, unreasonable or vexatious, has failed to comply with the ETR or an Order of the Employment Tribunal or the claim has not been actively pursued, that may be relevant to the possibility of a fair trial because if there has been repeated default in the past it is common for it to be repeated in the future, particularly if the party in default does not persuade the Employment Tribunal that their approach will change.*

21. It is also important to note how the possibility of a fair trial has been analysed after a determination that there has been default of the type provided for by Rule 38(1)(b)(c) and/or (d) ETR. In considering the issue of fair trial in the Employment Tribunal the EAT and Court of Appeal have often referred to the decision of the Court of Appeal, on appeal from the Chancery Division of the High Court, in ***Arrow Nominees v Blackledge*** *[2000] 2 BCLC 167 CA, a case in which the question was whether the disclosure of forged documents should result in strike out of the claim. Chadwick LJ, stated that the test to be applied was that of whether there was* ***a significant risk that a fair trial could not take place****."*

50. In <u>*Mr O Emuemukoro v 1) Croma Vigilant (Scotland) Ltd 2) Miss C Huggins and Others Data Cars Ltd: EA-2020-000006-JOJ (previously UKEAT/0014/20/JOJ)*</u> Choudary considered the authorities in relation to the question of the ability to conduct a fair trial.

"*17. Ms Hunt submits that it was common ground in this case that a fair trial would not be possible at any point during the five-day allocation (see para. 6 of the Judgment). That is enough, she submits, to satisfy the second of LJ Sedley's cardinal conditions. She submits that it is quite clear from what he said in <u>Blockbuster</u> itself at para. 21 that it is a highly relevant question that strike-out is considered on the first day of the trial and that it is obvious that whether or not a fair trial was possible includes the consideration of more than merely whether a trial can be held after an adjournment to allow any procedural defects to be remedied. She referred me to the following passage in the case of <u>Arrow Nominees Inc & Anor v Blackledge & Ors [2000] WL 775004</u>:*

> *"55. Further, in this context, a fair trial is a trial which is conducted without an undue expenditure of time and money; and with a proper regard to the demands of other litigants upon the finite resources of the court. The court does not do justice to the other parties to the proceedings in question if it allows its process to be abused so that the real point in issue becomes subordinated to an investigation into the effect which the admittedly fraudulent conduct of one party in connection with the process of litigation has had on the fairness of the trial itself. That, as it seems to me, is what happened in the present case. The trial was "hijacked" by the need to investigate what documents were false and what documents had been destroyed. The need to do that arose from the facts (i) that the petitioners had sought to rely on documents which Nigel Tobias had forged with the object of frustrating a fair trial and (ii) that, as the judge found, Nigel Tobias was unwilling to make a frank disclosure of the extent of his fraudulent conduct, but persisted in his attempts to deceive. The result was that the petitioners' case occupied far more of the court's time than was necessary for the purpose of deciding the real points in issue on the petition. That was unfair to the Blackledge respondents; and it was unfair to other litigants who needed to have their disputes tried by the court.*
>
> *56. In my view, having heard and disbelieved the evidence of Nigel Tobias as to the extent of his fraudulent conduct, and having reached the conclusion (as he did) that Nigel Tobias was persisting in his object of frustrating a fair trial, the judge ought to have considered whether it was fair to the respondents - and in the interests of the administration of justice generally - to allow the trial to continue. If he had considered that question, then - as it seems to me - he should have come to the conclusion that it must be answered in the negative. A decision to stop the trial in those circumstances is not based on the court's desire (or any perceived need) to punish the party concerned; rather, it is a proper and necessary response where a party has shown that his object is not to have the fair trial which it is the court's function to conduct, but to have a trial the fairness of which he has attempted (and continues to attempt) to compromise."*

Discussion

18. In my judgment, Ms Hunt's submissions are to be preferred. There is nothing in any of the authorities providing support for Mr Kohanzad's proposition that the question of whether a fair trial is possible is to be determined in absolute terms; that is to say by considering whether a fair trial is possible at all and not just by considering, where an application is made at the outset of a trial, whether a fair trial is possible within the allocated trial window. Where an application to strike-out is considered on the first day of trial, it is clearly a highly relevant consideration as to whether a fair trial is possible within that trial window. In my judgment, where a party's unreasonable conduct has resulted in a fair trial not being possible within that window, the power to strike-out is triggered. Whether or not the power ought to be exercised would depend on whether or not it is proportionate to do so.

19. I do not accept Mr Kohanzad's proposition that the power can only be triggered where a fair trial is rendered impossible in an absolute sense. That approach would not take account of all the factors that are relevant to a fair trial which the Court of Appeal in Arrow Nominees set out. These include, as I have already mentioned, the undue expenditure of time and money; the demands of other litigants; and the finite resources of the court. These are factors which are consistent with taking into account the overriding objective. If Mr Kohanzad's proposition were correct, then these considerations would all be subordinated to the feasibility of conducting a trial whilst the memories of witnesses remain sufficiently intact to deal with the issues. In my judgment, the question of fairness in this context is not confined to that issue alone, albeit that it is an important one to take into account. It would almost always be possible to have a trial of the issues if enough time and resources are thrown at it and if scant regard were paid to the consequences of delay and costs for the other parties. However, it would clearly be inconsistent with the notion of fairness generally, and the overriding objective, if the fairness question had to be considered without regard to such matters.

20. Mr Kohanzad's reliance on Rule 37 (e) does not assist him; that is a specific provision, it seems to me, where the Tribunal considers that it is no longer possible to have a fair hearing in respect of a claim, or part of a claim, that may arise because of undue delay or failure to prosecute the claim over a very substantial length of time, or for other reasons. However, that provision does not circumscribe the kinds of circumstances in which a tribunal may conclude that a fair trial is not possible in the context of an application made under Rule 37 (b) or (c), where the issue is unreasonable conduct on the part of a party or failure to comply with the tribunal's orders or the Rules.

21. In this case, the Tribunal was entitled, in my judgment, to accept the parties' joint position that a fair trial was not possible at any point in the five-day trial window. That was sufficient to trigger the power to strike-out. Whether or not the power is exercised will depend on the proportionality of taking that step."

Discussion and Conclusions

51. I do not propose to repeat all of the submissions made by the parties, and I have considered them in their entirety, even if those parts are not raised in my summary below.

52. The Respondent's position is that the Tribunal should strike out the Second, Third and Fourth claims and make an order debarring the Claimant from seeking any remedy save for an injury to feelings award. The Respondent points to:

    a. the history of this case showing that the Claimant has no intention of disclosing full medical records;
    b. that, based on the Claimant's assertion that she has had capacity to litigate throughout, this failure to disclose should be considered a deliberate failure;
    c. the extraordinary cost and time which has been involved in attempting to bring this matter to a final resolution. The Respondent is entitled to finality in litigation;
    d. without the relevant disclosure a fair trial is no longer possible.

53. The Claimant's position is that she has been compliant with the Tribunal's orders. Her position is that the Badenhorst report is factually wrong, and there are other medical reports which can be relied on. Her position is that the Respondent has previously agreed to proceed without sight of the Badenhorst report and agreed to the instructions to Dr Slinn which involved redactions in relation to the Badenhorst report and the Respondent had therefore agreed not to have sight of her medical records and had agreed that they were sent directly to Dr Slinn.

54. The relevance of these documents to liability and remedy have been explained to the Claimant by me and the Respondent in the April 2026 hearing, the Respondent's skeleton sent to the Claimant in advance of the hearing and a number of times during the present hearing.

Has the threshold in Rule 38 (c) been met?

55. There have been numerous orders that the Claimant must disclose documents relevant to liability and remedy such EJ Gray's order on that documents relevant to remedy be disclosed by 12 March 2021 (paragraph 11, page 120 RB). By this time, it was clear that career loss and personal injury damages were being sought by the Claimant. The Claimant's medical records are clearly documents which are relevant at this stage and should therefore have been disclosed.

56. However, by the time of the hearing of 24 May 2024 (paragraph 22 above) the requirement regarding medical records was made abundantly clear. The words in the case management order are clear. The Claimant was expressly ordered to disclose her medical records to the Respondent and did not do so, despite repeated requests made by the Respondent to her solicitor. In light of the clear words in the case management order, this must be regarded as a conscious and deliberate refusal to comply with an order of the Tribunal.

57. The Claimant has been under an ongoing duty of disclosure in relation to the Second and Third Claims. I ordered that all documents relevant to the Fourth Claim be disclosed by 2 March 2026. The Badenhorst report and the Claimant's medical records are relevant to all of these claims and should have been disclosed.

58. The Claimant did not comply with the order made on 26 April 2026 that she would provide an updated schedule of loss and documents relevant to mitigation by 22 May 2026 (page 243 RB). She stated that this was due to ill-health, but no medical evidence of this has been provided to the Tribunal. This order has still not been complied with at the time of writing.

59. The Claimant did not comply with my order of 13 May 2026 to confirm by 25 May 2026 whether she would disclose her medical records. When she did respond to this, on 28 May 2026, she stated that she would not disclose the Badenhorst Report and on 29 May 2026 stated that she would not disclose her medical records until they were corrected. As such there are further breaches of orders.

60. The Claimant has not complied with her ongoing duty of disclosure in relation to the Badenhorst report and medical records. Certainly, by the hearing on 24 April 2026, when I explained to her in clear terms that she could not cherry pick what was disclosed, this was a deliberate refusal to comply with her obligations.

61. Taking all of the above into account, I consider that the threshold in Rule 38(c) has been met.

Is there a significant risk that there cannot be a fair trial

62. It is clear, pursuant to ***Croma*** that this must be assessed by reference to the hearings as currently listed (starting on 6 July 2026).
63. I consider that there has been a significant change in the circumstances since EJ Housego's previous determination on 16 December 2022 that compensation would not be capped because the unredacted Badenhorst Report had not been disclosed. His decision was made on the basis that the Claimant would not say that she was precluded from looking for work by reason of illness (paragraph 9, page 133). In contrast, the Claimant now says she should be awarded career loss. Further, that decision on 16 December 2022 was made before the presentation of the Second, Third and Fourth Claim. The present decision relates to *both* disclosure of the Claimant's full medical records *and* disclosure of the Badenhorst Report in very different factual circumstances.

64. The Claimant points to what she says is a previous concession by the Respondent that the Badenhorst Report would not be disclosed to them. The Respondents are recorded by EJ Housego as "not pursuing" the point (page 185 RB). It is clear that it was raised. Not pursuing a point is not a formal concession which cannot be rescinded. The circumstances are now different, given that it has become clear that the Claimant has also not disclosed her medical records.

65. In relation to the First Claim, I consider that the Claimant's medical records, including the Badenhorst report, are of central importance to the question of assessing financial compensation. In circumstances where the Claimant is claiming for career loss, there must be an assessment of whether, because of the Claimant's underlying medical conditions, she would have become too unwell to be able to work in any event. Medical evidence is critical to determine the question of causation in relation to the personal injury element of the Claimant's claim. However, I consider that there

could still be a fair assessment of the Claimant's injury to feelings, which does not depend on medical evidence.

66. In relation to the Second, Third and Fourth Claims, the agreed List of Issues is appended to this judgment. I consider that the relevant evidence is inextricably linked to the assessment of both liability and remedy in relation to these claims. The Respondent's central position is that the Claimant was not well enough to work at the Respondent and this is why it was not appropriate to progress her job applications. The Badenhorst report was a contemporaneous assessment of the Claimant's fitness to work. The Respondent's conclusion that the Claimant was not well enough to work was based (at least in part) on that report. The Claimant's argument is that this report is factually incorrect and that its conclusions should be ignored, with the alternative report obtained by her to be preferred. However, this cannot be assessed without both parties and the Tribunal having sight of the Badenhorst report and understanding, in light of that, what is said to be incorrect and why. The Claimant's health is an important question when considering the proportionality of the Respondent's approach and the justification argument. Further, it is relevant to the question of whether suggested reasonable adjustments would have been effective in alleviating the pleaded disadvantage. In relation to assessing a *Chagger* argument, it is essential to understand the Claimant's medical position. It will also be a central question in considering the same points in relation to remedy as I have highlighted above in relation to the First Claim.

67. The Claimant made clear to me in the April 2026 hearing that she was not prepared to, and would never be prepared to, disclose the Badenhorst report in unredacted form to the Respondent. She was also express in her refusal to provide unredacted medical records. This did not change despite my warnings that I considered this would mean there was a risk there could not be a fair hearing and despite informing her later in writing that I was considering striking out the claim because of this. By email on 29 May 2026 the Claimant maintained the position that she would not disclose the medical records "until they were corrected" (see paragraph 43 above). This was the Claimant's position until the very last minute, then saying that she would disclose a redacted version of them which could be verified by a third party as being only redactions relating to the Badenhorst report. However, I am not persuaded that she would do even that, as she has not done so in the past, despite case management orders which stated that she had consented to do so.

68. So central are these documents to liability and remedy, that I consider that the Respondent would be put to a significant disadvantage evidentially. There could not be a fair trial (save in relation to injury to feelings in relation to the First Claim, as outlined above) without the Tribunal and the Respondent having access to these documents. The notion that the Claimant can cherry pick the medical evidence and disclose only those which she agrees with, whilst having in her possession/control documents which assist the Respondent's case but refusing to disclose them, flies in the face of fairness.

69. I consider that the second limb of the test in relation to Rule 38(c) and the threshold in Rule 38(e) have been met.

Proportionality

70. Strike out is a draconian step, and I must consider whether it is proportionate in all of the circumstances. In doing so, consideration of the overriding objective is central to the assessment of proportionality.

71. I have considered whether it would be more proportionate to make an unless order. However, I consider that the strike out warning on 13 May 2026, and the listing of a strike out hearing on 19 June 2026, has given the Claimant sufficient opportunity to disclose her medical records. At least in relation to the Badenhorst Report, she could have disclosed this once she realised that it may result in her case being struck out. She has not changed her position regarding this document. Whilst she has at the last minute stated that she would disclose a redacted version of her full medical records, I am not persuaded that the Claimant would do so. She has told the Tribunal she would do so before (such as in May 2024 paragraph 9, page 188) and has not done so. Previous conduct in litigation is a good indicator of likely future conduct. I consider that an unless order would not change the Claimant's approach in these circumstances.

72. There is now insufficient time before the remedy hearing in less than three months for the Claimant's medical records to be properly considered and if necessary, medical expert and pension expert advice taken in relation to it. I raised this with the Claimant in the April hearing. For a fair hearing to take place, there would need to be a postponement (which the Claimant most recently opposed).

73. I cannot see how there is any alternative way to approach financial compensation using a lesser sanction, such as debarring the Claimant from relying on medical evidence. I could not be fairly without reference to medical records in circumstances where the Claimant appears to have been too unwell to work during certain periods, and it must be assessed whether this would have arisen in any event. The personal injury compensation would be similarly difficult to assess.

74. I must take into account that these claims have been ongoing since 2020. The parties have incurred significant time and cost in dealing with these claims. Significant Tribunal resources have been taken up by these claims. There have been numerous management hearings, a significant volume of correspondence and a number of postponements. The Claimant may not be at fault for these matters, and I consider this point on the basis that she is not. However, this use of resources must nevertheless be considered against the backdrop of significant Tribunal backlogs and the finite resources of the Tribunal. Further, the Respondent is entitled to finality in litigation.

75. In all of the circumstances, I find that it is proportionate to strike out the Claimant's Second, Third and Fourth Claims and debar the Claimant from seeking compensation in relation to the First Claim other than in relation to injury to feelings.

76. The liability hearing listed for 6 July 2026 is vacated.

77. The remedy hearing listed to take place on 1 September 2026 for five days is reduced to a two day hearing since it will only deal with injury to feelings in relation to the First Claim. It is anticipated that that one day is sufficient, but the second day

is listed to ensure that there is time for breaks and avoid any chance of the hearing going part heard. As such, the hearing is now listed place on 1 and 2 September 2026.

Approved by

Employment Judge Volkmer
21 June 2026

Sent to the parties on:
22 June 2026

Case Numbers: 1403005/2020
1403640/2023
1401049/2024
1400245/2025

APPENDIX
AGREED LIST OF ISSUES
in relation to Second, Third and Fourth Claim

NB: whilst this expressly refers only to the Second and Third Claims, the parties have agreed that it also applies to the Fourth Claim, with an amendment to reflect time limits in relation to the Fourth Claim

1. **The Claimant's Claims under Case Number 1403640/2023 & Case Number 1401049/2024**

1.1. The Claimant brings the following claims:

1.1.1. Direct Discrimination on grounds of disability under section 13 Equality Act 2010

1.1.2. Discrimination arising from disability under section 15 Equality Act 2010

1.1.3. Failure to make reasonable adjustments under section 20 Equality Act 2010

1.1.4. Victimisation under section 27 Equality Act 2010

2. Disability

2.1. It is accepted that the Claimant has a disability, namely post-traumatic stress disorder and depression.

2.2. It is accepted the Respondent was aware of the Claimant's disability at the material times.

3. Time Limits

3.1. The Claimant's Second Claim was presented on 30 May 2023.

3.2. The Claimant's Third Claim was presented on 10 February 2024.

3.3. Accordingly, any act or omission which took place more than three months before these dates (allowing for any extension under the early conciliation provisions) is potentially out of time, so that the Tribunal may not have jurisdiction.

3.4. Can the Claimant prove that there was conduct extending over a period which is to be treated as done at the end of the period? Is such conduct accordingly in time?

3.5. Was any complaint presented within such other period as the Tribunal considers just and equitable?

4. Direct Discrimination on the grounds of disability under section 13 Equality Act 2010

4.1. Did the Respondent fail to progress the Claimant's job applications?

4.2. The Claimant relies upon the following comparators:

4.2.1. A non-disabled applicant who has worked for the Respondent previously.

4.3. Did the Respondent treat the Claimant as alleged less favourably than it treated or would have treated the comparators?

4.4. If so, can the Claimant prove primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of her disability?

4.5. If so, what is the Respondent's explanation? Can it prove a non-discriminatory reason for any proven treatment? The Respondent had received an occupational health report which indicated that allowing the Claimant to return to work for them may worsen the Claimant's condition.

5. Discrimination arising from disability under section 15 Equality Act 2010

5.1. Did the Respondent treat the Claimant unfavourably by not progressing her job applications?

5.2. Did the following things arise in consequence of the Claimant's disability? The Claimant's case is that arising from her disability, there were perceived issues with the Claimant's capability.

5.3. Was the unfavourable treatment because of any of those things?

5.4. Was the treatment a proportionate means of achieving a legitimate aim? The Respondent's position is that its legitimate aim was ensuring that staff are fit and well enough to undertake their role. The Respondent had received an occupational health report which indicated that allowing the Claimant to return to work for them may worsen the Claimant's condition.

5.5. The Tribunal will decide in particular:

5.5.1. Was the treatment an appropriate and reasonably necessary way to achieve those aims.

5.5.2. Could something less discriminatory have been done instead.

5.5.3. How should the needs of the Claimant and the Respondent be balanced?

6. Failure to make reasonable adjustments under section 20 Equality Act 2010

6.1. Did the Respondent apply the following provision, criteria and/or practice (the PCP):

6.1.1. Not reinstating, reengaging or employing individuals who:

6.1.1.1. are unable to start/return to full-time work; and/or

6.1.1.2. require additional support in order to work.

6.2. Did the application of any such PCP put the Claimant at substantial disadvantage in relation to a relevant matter in comparison to someone without the Claimant's disability, in that the Claimant needed a phased return and regular catch ups with her line manager to support her back to work?

6.3. Did the Respondent know or could it reasonably have been expected to know that the Claimant was likely to be placed at a disadvantage?

6.4. What adjustments could have been taken to avoid the disadvantage? The Claimant's position is that the Respondent should have facilitated a phased return to work with regular catch up meetings with her line manager.

6.5. Was it reasonable for the Respondent to have to take those steps and when?

6.5.1. The Respondent states that it was not reasonable for the Respondent to take these steps as they directly conflicted with the occupational health report that it had received. Prior to the receipt of this occupational health report, the Respondent did seek to facilitate a phased return.

6.5.2. Further, the Claimant was not employed by the Respondent at that time and therefore no duty to make such a reasonable adjustment arose.

6.6. Did the Respondent fail to take those steps?

7. Victimisation under section 27 Equality Act 2010

7.1. It is accepted that the Claimant carried out a protected act, namely bringing an Employment Tribunal claim under case number 1403005/2020.

7.2. Did the Respondent fail to progress the Claimant's job applications?

7.3. By doing so, did the Respondent subject the Claimant to a detriment?

7.4. If so, was it because the Claimant had done the protected act? The Respondent's position is that it did not progress the Claimant's job applications because of the occupational health report it had received stating that the Claimant to returning to work for them may worsen the Claimant's condition