



EMPLOYMENT TRIBUNALS

Claimant: D Deamer

Respondent: Littlefair Care Home Ltd

Heard at: London South

On: 20 October 2025

Before: Employment Judge Rice-Birchall
Ms A Boyce
Mr R Singh

Representation

Claimant: Mr Moleta, former colleague

Respondent: Mr Wheaton, counsel

UPON APPLICATION made by letter dated 15 August 2025 to reconsider the judgment dated 21 November 2024 under rule 69 of the Employment Tribunal Procedure Rules 2024, the judgment is revoked.

Written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

1. This is an application by the respondent for reconsideration of the Judgment of Employment Judge D Wright dated 21 November 2024, with written reasons provided on 4 August 2025, by which the respondent's ET3 and Grounds of Resistance were struck out under Employment Tribunal Rule 37(1)(c) (non-compliance with an order).

BACKGROUND

2. On 14th November 2023 EJ V Wright proposed striking out the response due to non-pursuit and non-compliance with her 28th November 2022 Case Management Orders. The Respondents successfully resisted that approach by their reply dated 20th November 2023, following which a new final hearing was listed on 13th May 2024 for 20th – 24th October 2025.
3. A Preliminary Hearing was listed for 21st November 2024 to deal with the claimant's strike out application and applications for disclosure. EJ D Wright struck out the response at this hearing for failure to comply with case management orders regarding disclosure. Written judgment was issued on 21st November 2024, and written reasons were applied for on

28th November 2024. Written reasons were provided some eight months later on 4th August 2025.

4. The respondent alleges that the Employment Tribunal had not processed the respondents' correspondence that demonstrated their compliance with the Case Management Order of Employment Judge V Wright (in particular, lodging witness statements and an updated bundle with all of the claimant's disclosure).
5. The respondent thereafter applied for a reconsideration and appealed the decision to strike out the response to the EAT.
6. The claim was listed for a FMH before this Tribunal commencing 20 October 2025, but the reconsideration had not been dealt with. The Tribunal considered the reconsideration application had reasonable prospects of success, and decided that it should hear the reconsideration application, in the interests of justice, which it did with the consent of the parties.
7. In considering the application the Tribunal had before it a Bundle of documents prepared by the respondent entitled "Supplementary Bundle – 15 August 2025 Reconsideration Application"; a witness statement of Mr Gilmore (though Mr Gilmore was unable to attend the hearing and in the event, no weight was placed on his statement) and an application made by the respondent's representative. The Tribunal also read the written reasons given by EJ D Wright for the strike out judgment. The claimant also sent in a number of documents which the Tribunal read during the course of the hearing, namely the "Claimant's Reply to Respondent's Response to Strike-Out Warning and Claimant's Applications for Specific Disclosure" and "Submissions on Recon and Position Statement and Res Judicata".
8. The claimant's request for disclosure which led to the strike out judgment was as follows:
 - a. all investigation notes and completed investigation reports allegedly produced by Ms Sharon Fox relating to the claimant's grievances which preceded dismissal and "interrelated communications/responses from Mr Nick Sherrard which are referred to in contemporaneous notes";
 - b. recordings taken at the above grievance meetings.
 - c. Comms/instructions as to who was subsequently assigned the responsibility of undertaking the deep-clean of all kitchen fridges/freezers prior/ during or after the deep clean undertaken by Bright Hygiene.
 - d. Evidence that the respondent's policies were changed from QCS to RBS Mentor Policies; and
 - e. Inspection of photos.
9. During the course of the hearing, the respondent prepared and presented a letter from a Mr Alan D Philip, Senior Employment Law Litigator for the Royal Bank of Scotland, who act for the respondent. Most relevantly, it stated: "I have not had direct involvement with this case on behalf of the Respondent. However, I have had ongoing discussions with my colleagues who have. Namely, D B, who left us on 24th March 2023 to

become an Employment Judge, and S G who is presently on holiday. Both of them are qualified solicitors. Both D and S advised me several times, during the course of these proceedings, that:

1. All documents, relevant and necessary to the case, had been disclosed to the Claimant.
2. No further documents, beyond those already in the bundles sent to the Claimant, relating to the investigation of the Claimants allegations had been disclosed to them.
3. The Respondent had advised them that there were no recordings of any meetings between the Claimant and Nick Sherard or any other employee of Littlefair.
4. No recordings had been disclosed to them.

S also advised me that only at the hearing, to strike out the response, did the Claimant request that he wanted disclosure of specific documents and recordings. At that time, Counsel for the Respondent advised there were no further investigation documents and no recordings. I have been a qualified solicitor in Scotland, since 1994. I am fully aware of my duty to the Tribunal.”

10. The Tribunal anonymized the names in the letter for the purposes of these written reasons.

RESPONDENT’S RECONSIDERATION APPLICATION

11. The arguments put forward by the respondent were as follows:

Ground 1 - Procedural Irregularity and Lack of Clarity as to Basis of Strike-Out

12. The Judgment does not identify with clarity the precise Case Management Order or obligation said to have been breached. In particular:
 - a. Paragraphs 15–17 of the Reasons appear to rely on the 28 November 2022 Case Management Orders concerning the bundle.
 - b. Paragraph 48 appears instead to rely on the 5 July 2021 Case Management Orders concerning disclosure.
 - c. There is further uncertainty whether the strike-out was based on alleged failures to permit inspection, notwithstanding that no Case Management Order specifically required inspection.
13. Neither set of Case Management Orders contained any express order for disclosure. The Respondents were entitled to approach disclosure in line with principles of relevance, necessity and proportionality.
14. Striking out without identifying the precise breach contravenes the requirements of natural justice and Rule 37(2).

Ground 2 - Disproportionate Sanction: A Strike-out Order is a Measure of Last Resort

15. The EAT has repeatedly emphasised that sanctions are designed to secure compliance, not to be punitive.

16. The Employment Judge acknowledged in paragraph 50 that a fair trial remained possible and that lesser sanctions were available yet nevertheless imposed the most draconian penalty.
17. The final hearing was not listed until October 2025, nearly a year after the strike-out decision, leaving ample time for remedial compliance. Sadly, that time was wasted whilst waiting for the written reasons since the 28th of November 2024 request for them.

Ground 3 – Unequal Treatment Between Parties

18. The Employment Judge placed near-absolute blame on the Respondents for earlier delays, ignoring:
 - (i) The Claimant's disproportionate and irrelevant disclosure demands.
 - (ii) The ET's failure to deal with the Claimant's disclosure application dated 2 November 2022.
 - (iii) The ET's own delay in addressing notifications from both parties.
 - (iv) The Claimant's own late notifications.
 - (v) The Employment Judge's acceptance that the Claimant's letters were vague and irrelevant (paras. 14, 20, 33), but consequences were visited only upon the Respondents.
 - (vi) A double standard was applied, with adverse inferences drawn against the Respondents but not against the Claimant.

Ground 4 – Procedural Deficiencies in the Strike-Out Hearing

19. The Employment Judge stated he was not "re-litigating" Employment Judge V Wright's earlier decision not to strike out yet relied on the Respondents' reply to that earlier warning as justification for strike-out, in substance reopening the issue.
20. The Employment Judge did not have before him the final hearing bundle (submitted in June 2024), which was directly relevant to the complaints of bundle preparation.

Ground 5 – Delay and Tribunal's Contribution to Procedural History

- 21.. The Tribunal failed to acknowledge its own contribution to delay, including:
 - (i) Failing to process or confirm receipt of the bundle submitted in January 2023.
 - (ii) Erroneously proposing strike-out on the mistaken belief of non-compliance with the 2022 Case Management Orders.
 - (iii) Sending correspondence to an incorrect email address for over a year despite repeated correction.
 - (iv) Failing to address multiple applications from the Claimant in a timely fashion: The learned Employment Judge's brief acknowledgment (para. 52: "I appreciate that the Tribunal has not always acted promptly...") materially understated the Tribunal's responsibility.
 - (v) Taking over eight months between receiving a request for written reasons and issuing them, which made it subsequently impossible to keep to the original final hearing dates of 20th to 24th October 2025.

Ground 6 – Failure to Apply the Overriding Objective

22. Rule 2 requires cases to be dealt with fairly, justly, and with parties on an equal footing.
23. The cumulative effect of the above amounted to a failure to apply the overriding objective: the sanction was disproportionate, the reasoning was unclear, and the Tribunal did not treat the parties equally.

CLAIMANT'S OBJECTIONS TO RECONSIDERATION

24. The claimant's objection to reconsideration was, inter alia, that the respondent sought to undermine EJ D Wright's decision and challenges his findings of fact and focused on the respondent's alleged failure to disclose documents and to allow inspection which, it said, the respondent was unwilling to rectify. The claimant also raised the issue of res judicata and the application of **Henderson v Henderson** in support of his argument that there should be finality in litigation.

LAW

Reconsiderations

25. Reconsiderations are dealt with in the Employment Tribunal Rules of Procedure at rules 68 to 71. They begin as follows:

Principles

68.—(1) The Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so.

(2) A judgment under reconsideration may be confirmed, varied or revoked....

Process for reconsideration

70.— (1) The Tribunal must consider any application made under rule 69 (application for reconsideration).

(2) If the Tribunal considers that there is no reasonable prospect of the judgment being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application must be refused and the Tribunal must inform the parties of the refusal.

26. There may be many reasons why it would be in the interests of justice to vary or revoke a judgment. The wrong decision may have been sent out due to an administrative error. A party may not have received notice of the hearing. Or new evidence may have come to light. In previous versions of the Rules those situations were listed as separate grounds for

reconsideration. Now everything comes under the 'interests of justice' test. Whatever the reason, something needs to have gone badly wrong with the decision-making process. If so, the Tribunal can correct things without the need to go to an appeal.

27. [In **Ebury Partners Ltd v Acton Davis** [2023] EAT 40, the EAT gave guidance on the limitations on a tribunal's jurisdiction to reconsider. The EAT found that a central aspect of the interests of justice is finality of litigation. It is unusual for a litigant to be given a "second bite at the cherry" and the jurisdiction to reconsider should be exercised by employment tribunals with caution. While it may be appropriate to reconsider a decision where there has been a procedural mishap meaning that a party has been denied a fair and proper opportunity to put their case, reconsideration should not be used to correct a supposed error made by the tribunal after the parties have had a fair and proper opportunity to put their case.
28. The interests of justice also requires consideration of the right to a fair trial under Article 6(1) of the European Convention on Human Rights, incorporated into UK law by the Human Rights Act 1998 and the overriding objective which requires the tribunal to do justice to both parties.

Strike out

29. In **Forrest v Amazon Web Services EMEA Sarl UK Branch** [2025] EAT 81, the EAT considered the factors that an employment tribunal should take into account when considering whether to strike out a claim due to non-compliance with case management orders:
- The magnitude of the non-compliance.
 - Whether the failure was the responsibility of the party or their representative.
 - The extent to which the failure causes unfairness, disruption or prejudice.
 - Whether a fair hearing is still possible.
 - Whether striking out or a lesser remedy would be an appropriate response to the disobedience in question.

CONCLUSIONS

30. The Tribunal carried out an initial consideration of the application on paper and considered that there was a reasonable prospect of the original decision being varied or revoked as the respondent was adamant that it had complied with its disclosure obligations at the time the Judgment to strike out was made, that the Tribunal was not, at the time, in possession of its Bundle and witness statements, and there had not been any breach of any particular order, the respondent having prepared the said witness statements and bundle.
31. The Tribunal considered that it was in the interests of justice to hear the reconsideration application, on the basis that the respondent may be denied natural justice by the Tribunal's decision to strike out its response in circumstances in which there appeared to have been compliance with the Tribunal's orders.
32. The parties consented to the hearing taking place, without notice, before the final hearing was commenced. The parties also consented to it being

dealt with by this Tribunal, in circumstances in which it was not practicable for the consideration of the Judgment to be made by the Employment Judge who made the original decision to strike out the response without further significant delay.

33. The Tribunal found that the response was struck out by EJ D Wright in consequence of his findings that the respondent had not complied with its disclosure obligations by failing to provide certain documents, which included the recordings and investigation notes referred to above and had not permitted inspection of some photographs. However, it is the respondent's case throughout that it has complied with its disclosure obligations to disclose all relevant documents in its possession or control, and it has now submitted a letter to the Tribunal in that regard.

Non-compliance with orders

34. The Tribunal is satisfied that there was no material non-compliance with any Tribunal orders.
35. There was no order for specific disclosure of any of the documents referred to above which are the relevant documents for the purposes of this application. Nor were any such orders made for the inspection of any documents, either generally or specifically. There can therefore have been no breach of any case management order.
36. The Tribunal is satisfied that the respondent had complied with its obligation to prepare a bundle of documents, which included the claimant's disclosure and to prepare witness statements, though evidence of that may not have been available to EJ D Wright.
37. In any event, the Tribunal accepts the respondent's position as set out in its letter to this Tribunal set out above and accepts that it has disclosed all relevant documents.
38. More specifically, the respondent confirmed, and the Tribunal accepts, that:
- a. all investigation notes and completed investigation reports allegedly produced by Ms Sharon Fox relating to the claimant's grievances which preceded dismissal and "interrelated communications/responses from Mr Nick Sherrard which are referred to in contemporaneous notes" have been disclosed at pages 387-391 and 447-460 of the final hearing Bundle or do not exist.
 - b. recordings taken at the above grievance meetings (whether or not the claimant has his own recording) have been disclosed or do not exist.
39. As regards the claimant's request for communications and instructions as to who was subsequently assigned the responsibility of undertaking the deep-clean of all kitchen fridges/freezers prior/ during or after the deep clean undertaken by Bright Hygiene, the claimant could not explain why these documents were relevant to his claim. The Tribunal finds that they are not relevant to the issues.

40. As regards evidence that the respondent's policies were changed from QCS to RBS Mentor Policies, it transpired that the claimant believed he was advancing a breach of contract claim which he was not. The Tribunal finds that these documents again were not relevant.
41. As regards the inspection of photos, the Tribunal was satisfied that there had been no order made for the inspection of any photographs and, in any event, it was unclear of the relevance of the need to inspect the original photographs.
42. The respondent disclosed documents it considered to be relevant rather than responding to every request by the claimant. It is necessary, during Tribunal proceedings, to limit the disclosure to be relevant to the issues in the case.
43. As the Tribunal finds that the respondent has not failed to comply with orders made by the Tribunal, the Tribunal considers that the strike out judgment should be revoked. The Tribunal considers therefore that the very basis of the strike out was flawed and that there was no failure to comply with any specific case management order which has been identified. An order for the specific disclosure of certain documents is very different to an order for disclosure generally.

Fair hearing

44. Even if the Tribunal had found there to have been a failure to comply with Tribunal orders, there does not appear to be any reason as to why a fair hearing would not have been possible notwithstanding any non-compliance. In circumstances in which the original Tribunal considered that there had been a breach of the order to disclose documents, some consideration should have been given to whether lesser remedies, such as an unless order or costs, may have been preferable to denying the respondent the right to participate in a hearing. The Tribunal considers that there was not a proper consideration of whether a fair hearing would still be possible or whether a lesser remedy would be an appropriate sanction to any disobedience in question.
45. The interest of justice requires consideration of the right to a fair trial under Article 6(1) of the European Convention on Human Rights, incorporated into UK law by the Human Rights Act 1998. The Tribunal also considered the overriding objective which requires the Tribunal to do justice to both parties. In circumstances in which the Tribunal did not properly consider alternatives to striking out the response, it was not in the interests of justice for the decision to strike out the response to stand.
46. In the circumstances, the Judgment striking out the respondent's response is revoked.

Approved by:
Employment Judge Rice-Birchall
Date: 10 November 2025

Sent to the parties on:

Date:

Michael Chandler
For the Tribunal office