



EMPLOYMENT TRIBUNALS

Claimant: Ms Rafaelia Sahin

Respondent: Mind in Enfield and Barnet

Heard at: Watford Employment Tribunal CVP **On:** 18 May 2026

Before: Employment Judge Young

Representation

Claimant: Litigant in person

Respondent: Mr Jack Feeny (Counsel)

JUDGMENT of Employment Judge Young having been sent to the parties on 15 June 2026 and written reasons having been requested by the Respondent in accordance with Rule 60(4) of the Employment Tribunal Procedure Rules 2024, the following reasons are provided:

REASONS

Brief history of the application

1. On 8 September 2025, the Employment Tribunal listed a Preliminary Hearing for 12 February 2026 and ordered that the Claimant provide further and better particulars of her complaints. The Claimant was ordered to provide a disability impact statement and disclosure of medical evidence relevant to the disability by 6 October 2025. However, the order in respect of further and better particulars did not provide a date for compliance. On 14 October 2025, the Respondent wrote to the Employment Tribunal, copying the Claimant, to say that the Claimant had not complied with the Employment Tribunal's orders. On 3 November 2025, the Claimant wrote to the Respondent, copying in the Employment Tribunal and explained that she considered that she could not comply with providing further details because in January 2024 the Respondent removed access to her work emails, calendar and service database. The Claimant stated that she therefore needed disclosure from the Respondent in order to be able to provide further particulars. The Claimant requested an order for disclosure to do this [75-75]. The Respondent responded on 8 November explicitly stating "*the claimant is wrong to allege that she has been denied access to her work email, Teams chat and other folders/documents, by the respondent. As per paragraph 17 of the Grounds of Resistance, in or around the beginning of March 2025 the Respondent arranged for its IT provider to*

make available to the claimant remote access to her IT systems on a 'static' basis. If she was to make use of this provision/Sharefile the claimant would be able to view all historic emails, Teams chat and other work folders/documents (that cover the timeline in this claim)." [77]

2. On 27 January 2026, making reference to the Respondent's correspondence of 14 October 2025 and the Claimant's correspondence dated 3 November 2025; EJ Tynan ordered that the Claimant provide the further and better particulars by 4 February 2026 and disclosure of medical evidence and a disability impact statement [79]. EJ Tynan told the Claimant in clear terms "*As regards the Tribunal's order for the Claimant to provide further information about her claim (paragraphs 1 - 7 of the Tribunal's case management order of 8 September 2025), it is for the Claimant to set out the essence of her claim rather than for the Respondent to provide unrestricted access to its data to enable her to decide what claims she intends to bring.*" [79] The Claimant wrote on 3 February 2026 alleging that the Respondent had misrepresented the position regarding access to the Respondent's systems; she stated, "*I have not been granted unrestricted or meaningful access to the IT systems and data essential for substantiating my claim*" [81].

Hearing

3. The Employment Tribunal was provided with a bundle of 185 pages. All references to page numbers are references to the preliminary hearing bundle provided.
4. At the start of the hearing, the Claimant stated that she was struggling to attend and did not feel well. She said that she felt diminished. She said that she could only go ahead for a year. She told the Employment Tribunal that she did not think she could meaningfully go ahead. The Employment Tribunal asked the Claimant whether we should see how we got on, and if it was too difficult for her, then we would stop. The Claimant said that she wanted the hearing to take place via CVP. The Claimant stated that she had material difficulties. She said that she would wish to appeal. In the middle of the Respondent's oral submission at 10:59, the Claimant said that she had to pause because she was sick. The Claimant left the Employment Tribunal hearing room in a hurry, and I asked Mr Feeney to leave. At 11:09 the parties returned. I asked the Claimant if she could continue with the application. The Claimant said yes, and we continued
5. The Claimant was asked whether she had complied with the order. The Claimant responded that she was not able to comply. The information that she had provided was as well as she could do. The Claimant said that she felt that the request for further and better particulars was a diversion.
6. The Employment Judge referred the Claimant to EJ Tynan's order [79] which specifically told the Claimant that access to the Respondent's system was not relevant.

The Respondent's submissions

7. The Respondent made their oral submissions (in summary) as follows: [85] on 9 February 2026 before the case management preliminary hearing on 12 February 2026, the Respondent's GOR pleaded that they were not able to respond properly, so they requested the further and better particulars. The Respondent's submission is that the Claimant's case is not particularised. The Respondent was not able to identify sufficient particulars. i.e. the protected act and the Employment Tribunal agrees with the Respondent because they made an order for the Claimant to provide further and better particulars [66]. There was no date at that time that the Claimant needed to provide the further and better particulars by at that time [73]. However, on 14 October the Respondent wrote to the Employment Tribunal and stated that the Claimant had not complied. The Respondent chased their correspondence with the Employment Tribunal regarding the Claimant's non-compliance [74]. The Claimant responded on 3 November 2025. [75] The Claimant said that she would provide disclosure by the end of the week. That was the first time that the Claimant said that she would require disclosure from the Respondent in order to comply with the order for further and better particulars.
8. On 7 November 2025, the Respondent responded. The Respondent stated that they would provide static access to the Claimant's email and files. The Respondent said that static access has been available since March 2025. Static access is a link that the Claimant can click to access Outlook, and sent items would be accessible to her. It contains access to historic Teams messages, access to her own SharePoint documents that she had created, and her OneDrive. The Claimant has access to Sanctuary (a service provided by the Respondent, and it is also static). The Respondent stated that all this remains accessible to the Claimant to date.
9. Peter Etherington (a trustee of the Respondent) emailed the Claimant and said that if there is anything you cannot access, he should let her know and he would try and obtain it (paragraph 17) [52]. The DPO of the Respondent had sent something similar to the Claimant. The Claimant had made more than one SAR (she had received a wad of printed emails in response).
10. EJ Tynan's order sets out the further information that is to be provided by 3 February 2026 [79]. EJ Tynan had disposed of the Claimant's argument regarding requiring disclosure before providing details (and there is no current appeal). It cannot be challenged.
11. On 3 February 2026, the Claimant wrote to say that she will not provide the further particulars. [82] She didn't say before that, that she needed access to the Respondent's files in order to provide the disability impact statement. This is in contrast to what EJ Tynan ordered her to do. She had not complied entirely at this stage.
12. On 9 February 2026, the Respondent made their Strike Out application [84]. At paragraph 3.11 of that application, the point is made regarding static access.

On the same day, the Claimant responded to the Respondent's application [113]. The Claimant says that she cannot provide further detail [114]. By email dated 11 February 2026, the Claimant now says that the Respondent is now at the early stages of reestablishing access [116] [117]. The following day, on 10 February 2026, Jayne Pearce (Co-chair of the board of trustees) writes to the Claimant to say that the Claimant still has access via a link. [185] On 11 February 2026 the Claimant makes an application for a postponement of the case management preliminary hearing listed for 12 February 2026 as she needs to review those documents [117]. The Respondent read that email in the context of sending the link the day before. On 12 February 2026, the case management preliminary hearing takes place; the Claimant does not attend, and her application for a postponement is refused. EJ French makes orders and lists a preliminary hearing to hear the Respondent's strike out order [125]

13. After the hearing on 12 February 2026, on 4 March 2026 the Claimant wrote to the Respondent [122]. The Claimant refers in her email to attempting to engage with the Respondent to get meaningful access to their IT systems in order to prepare for the rescheduled preliminary hearing [123]. Mr Feeney said that the Respondent doesn't understand this, as there hasn't been any communication about reestablishing access. There was no correspondence between the Respondent and Claimant and nothing between the Respondent's solicitor and the Claimant.
14. During the Respondent's submissions, the Claimant tells the Employment Tribunal that there is correspondence between the parties on 16 February 2026 [152-153]. The Claimant said that the Respondent had failed to respond to that correspondence. [152-153]
15. Mr Feeney continues the Respondent's submissions and explains that the disability impact statement [130] was sent on 28 April 2026. The Respondent has not received an explanation as to why it took 3 months for the Claimant to comply. In that 28 April correspondence, Mr Feeney said that he thought that the Claimant stated this is the 4th time the Claimant said she will not comply. [133]
16. Mr Feeney added that the Claimant said that she had to obtain medical evidence at that point, but it appears she didn't. She had to get retrospective evidence, as the GP letter provided doesn't say in terms that her health has prevented her from complying with orders. [184] There was non-compliance in respect of the disability impact statement. The Claimant said in November 2025 that she would do it in a week and then provided it 3 months later. This is relevant.
17. The principal application is made under rule 38(1) (c) Employment Tribunal Procedure Rules 2024 ('ETPR') and is for non-compliance, and then rule 38(1)(b) ETPR in respect of unreasonable conduct. The Claimant believes she needs disclosure first before she can comply. EJ Tynan disposed of that argument. The Respondent says it is unreasonable conduct. The position on static access is that EJ Tynan said that the Claimant can comply with the order. The Claimant has not said why she cannot access the Respondent's IT system. Mr Feeney stated that the Respondent thinks it had been accessed at the start in March but not since. The Claimant has received the response to her DSAR;

there is no reference to that by the Claimant. There is no further information. It may not have included everything the Claimant thinks she needs, but the Respondent thinks it is because she didn't request it.

18. Dealing with the question of whether a fair trial is still possible; every single thing has a gap. There isn't a single thing dealt with on time. The Employment Tribunal cannot draw up a list of issues without the further and better particulars. The effect is that the Respondent cannot undertake a position on disclosure and the Employment Tribunal cannot list the final hearing as it does not know the scope of the Claimant's case.
19. The Respondent accepts that there is no date on original date on the order, but the Claimant should have provided it by October/ November 2025. We have lost 7 months due to the Claimant's non-compliance. Even if details were provided, there is still further delay as we will all need to come back for another hearing. This is a minimum 10 day hearing, so that pushes it further into the future. The Employment Tribunal is referred to the authority of Boateng at page 7, paragraph 14 onwards (right to fair trial paragraph 15), paragraph 18; such cases are exceptional and involve extreme conduct. Paragraph 19 of the same decision refers to the impact of the passage of time (i.e. ability to recall details), and the forensic prejudice. Mr Feeny wished to clarify his earlier submission that Jayne Pearce is not a member of the board of trustees. But he is not in a position to tell the tribunal who she is. The 2 employees of the Respondent may not be available. Paragraph 24- ET needs to consider what might be done to secure a fair trial.
20. The Respondent's further submissions in summary are that:
1. The Claimant's non-compliance is deliberate and unreasonable conduct
 2. The Claimant wants the Employment Tribunal to change the timetable
 3. The Claimant said a number of times she is unable to provide disclosure, which EJ Tynan wrote she could provide
 4. The Claimant has not dealt with the issue of static access.
21. The Respondent argued for an unless order in the alternative, but accepted that an unless order is pointless as the Claimant says that she will not comply. Litigation is at an impasse. There are no proportionate measures that the Employment Tribunal can take.

The Claimant's submissions

22. The Claimant said that she has not clicked on the link. She said that it had an error message saying that it cannot be accessed personally. She says she clicked on it most recently when told about it on 10 February 2026. She said that it doesn't go anywhere. She said that it can only be accessed by a secure device. When the link was first sent, she was told that it could only be accessed from her work device.

23. The Claimant wanted to tell the Employment Tribunal about the relevance of the Sanctuary service; however, the Employment Tribunal told the Claimant to return to that point when she had addressed the issue of her non-compliance.
24. The Claimant said in respect of the public interest disclosures she was relying on telling her manager, Ellie Crawford, that she had concerns about safety issues and that she would need to escalate it. The Claimant said that she thought that she made a broad reference to the matters and that it had been discussed on a previous occasion. As regards safety, they were not being adequately trained to support high risk. It was a health and safety issue for the public and members of staff. The Claimant said that she raised it in 2023 after staff were becoming distressed after being employed for a couple of months. The Claimant was not able to say whether she made this disclosure in person or not.
25. The Claimant said that she thinks that she can comply with the order. The Claimant came back to the issue of the link. The Claimant said that in January 2024, she was told about instructions regarding accessing the link. The Claimant would not answer the question directly of whether she accepted that she did not need disclosure to comply with the Employment Tribunal's order. The Claimant responded instead that she was nervous about complying and that she needed detail to comply. She said that the data conversation kept continuing. When asked how long it would take for the Claimant to comply with the order, the Claimant said she didn't want things to go on too long but that she had been very unwell and has a growing brain tumour. The Claimant asked why not give me the same time as someone who is well. When the Claimant was offered 14 days, she said that it was too short. She said that she was going to find providing the details exhausting.
26. It was proposed to the Claimant that she must provide whistleblowing details within 14 days and that if she complied with that she would then get a 4 week extension; however, if she did not comply with the whistleblowing details within 14 days then she would be expected to comply by providing all the details within 14 days. The Claimant said that she didn't know if she could. The Claimant wanted to know why the Respondent said that she didn't say in Employment Tribunal correspondence that she could not access the evidence via the link. When the Claimant was asked why she didn't tell the Respondent that she had clicked the link but could not get access, the Claimant said that she needed a break and got emotional. The Claimant said she had personal issues as well as health issues. After a 10 minute break, the Claimant answered that she thought that the IT would need prompts and thought she wouldn't be able to nudge further without the information. She said that she didn't feel she could make any movement forward without data. The Claimant said that even now, there would be a significant compromise of the accuracy of information provided if she was provided with it. The Claimant said that the data she sought disclosure of was relevant to her claim as the Respondent provided only pedestrian evidence and there was no damning evidence and they relied on ridiculous points. The Claimant said that her non-compliance was a misunderstanding of exactly what was needed and she did not take up what EJ Tynan said. She said that she did a bit of research to look things up. She said that she spoke to an HR consultant who said that if she didn't have access, then she couldn't provide the detail. If she had access, then you could provide details. The Claimant admitted that maybe it wasn't good advice. The Claimant

said that the HR Consultant told her to ask the Tribunal to mandate them to give you access. The Claimant admitted that she didn't tell the HR person about the Employment Judge's order. She said that at a very early stage she went to get legal advice but not since. She said that the legal advisor had looked over the things that were going into her claim, but there was no further legal advice. She said that she paid for some legal advice but not anything further. The Claimant accepted that currently she is on full pay. She said that she didn't get any further legal advice because she doesn't believe she can afford it. The Claimant said that she had savings, but she also has to meet private medical costs. The Claimant said that she had gone through a Tribunal (at London East) in the past and had taken legal advice then and had legal representation (FRU). However, in respect of this case, the FRU told the Claimant that it could not take on her case because they had too much at the moment. The Claimant accepted that in that previous case she had to comply with orders in the past.

27. The Claimant added that the case in London East was a good few years ago and the Claimant was unwell then. The FRU was representing her at the time. The Claimant said that she needed things to be broken down then as she had a significant impairment. The claim was against another employer. The Claimant admitted that there had been genuine mistakes made. The Claimant said that she had significant issues engaging and with obtaining medical evidence. She would have struggled to have obtained updated evidence, and she genuinely believed she was not able to comply because she was unwell, and that there was a misunderstanding. The Claimant said that it was difficult receiving adversarial communications even if the Respondent was trying to move things on. She said that there was an element of it being good for them. The Claimant said that it has kept us at an impasse.
28. The Claimant said that it was unfair to describe her conduct as non-compliance. The Claimant said that now she just wants to get to the next stage. The Claimant stated that she has a right to a fair hearing. The objection she made was the email; she was not objecting to attending today. She said that it was not possible to get a GP letter; it cost £50. She said that she cannot write notes. She said that she cannot tell the Employment Tribunal what day she would be well enough to comply. The Claimant said it would be an advantage to not have to travel, but she does have issues with screens; she said that she can manage screens for a day by taking breaks.
29. The Claimant was not able to explain why she could comply with providing the disability impact statement by April 2026, but not the further better particulars. The Claimant said that she had been really unwell; she takes 10 different medications for 3 different conditions. The Claimant said she had missed things and had no functional life. The Claimant said that she used the previous disability impact statement. She said that she did a lot of reading around disability impact statements; it took her a while.

Respondent's response to the Claimant's submissions

30. The Respondent responded to the Claimant's submission that it is easy for the Claimant to say that she will comply. An unless order would create another mess for another day. She criticised the Employment Tribunal, i.e. the refusal of postponement. She thinks she is right even though the Employment Tribunal told her that her medical evidence was not adequate. The Employment

Tribunal should treat the Claimant, saying that she is going to comply with caution. The Claimant has demonstrated that if she does not agree with the order, she will not comply. The Claimant was not sincere about her wish to proceed with her claim. She did not make clear that it was an issue of device set-up regarding the link; the correspondence does not reflect this. Strike out is the only option.

Claimant's response to the Respondent's further submissions

31. In response to the Respondent, the Claimant said that she does understand that she needs to comply, although she is not well enough. The Claimant said that she will get advice. The Claimant said that in the previous litigation there was less to look at and she had a DSAR before the tribunal hearing. The Claimant said that she had all the data as the previous employer provided SAR with the previous judge, who itemised the case. The Claimant said that she will do it within the 14 days and then make use of the facility of any extra time.

Relevant Law

32. Rule 38 of the Employment Tribunal Procedure Rules 2024 (ETPR) gives the Tribunal the power to strike out all or part of a claim:

“38.— Striking out (1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—

- i. that it is scandalous or vexatious or has no reasonable prospect of success;*
- ii. 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;*
- iii. for non-compliance with any of these Rules or with an order of the Tribunal;*
- iv. that it has not been actively pursued;*
- v. that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).”*

33. Rule 38(2) ETPR says that a claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

34. In deciding whether to strike out a party's case for non-compliance with an order under r38(1) (c), a tribunal must have regard to the overriding objective set out in rule 2 ETPR of seeking to deal with cases fairly and justly. The EAT's decision in Weir Valves and Controls (UK) Ltd v Armitage [2004] ICR 371 explains that this requires a tribunal to consider all relevant factors, including: a. the magnitude of the non-compliance; b. whether the default was the responsibility of the party or his or her representative; c. what disruption, unfairness or prejudice has been caused; d. whether a fair hearing would still be possible;

and e. whether striking out or some lesser remedy would be an appropriate response to the disobedience.

35. In Cox v Adecco [2021] ICR 1307, HHJ Tayler provided guidance where the litigant in person has not clarified their discrimination claims, as is the case here. HHJ Tayler directed Employment Tribunals that:

“30. There has to be a reasonable attempt at identifying the claims and the issues before considering strike out or making a deposit order. In some cases, a proper analysis of the pleadings, and any core documents in which the claimant seeks to identify the claims, may show that there really is no claim, and there are no issues to be identified; but more often there will be a claim if one reads the documents carefully, even if it might require an amendment. Strike out is not a way of avoiding rolling up one's sleeves and identifying, in reasonable detail, the claims and issues; doing so is a prerequisite of considering whether the claim has reasonable prospects of success.”

36. Lindsay P, in De Keyser Ltd v Wilson [2001] IRLR 324, does make the point that there can be circumstances in which a finding can lead straight to a debarring order. Such an example, we note paragraph 25 of Lindsay P's judgment, is “wilful, deliberate or contumelious disobedience” of the Order of a court.

37. In Emuemukoro v Croma Vigilant (Scotland) Ltd [2022] ICR 327, the EAT confirmed that whether a fair trial is possible does not require an Employment Tribunal to determine the question in absolute terms. In that case, the EAT approved the ET's approach that the question of a fair trial was in respect of that trial window allocated.

38. The House of Lords in Anyanwu v South Bank Students Union and South Bank University [2001] IRLR 305, explained that a strike out will not normally be appropriate in cases where there are substantial disputes of fact, especially in discrimination claims which are highly fact sensitive.

39. Principles to apply to determining a strike out application in respect of discrimination complaints were summarised in Mechkarov v Citibank NA [2016] ICR 1121, where Mitting J gave the following guidance:

“(1) only in the clearest case should a discrimination claim be struck out; (2) where there are core issues of fact that turn to any extent on oral evidence, they should not be decided without hearing oral evidence; (3) the Claimant's case must ordinarily be taken at its highest; (4) if the Claimant's case is “conclusively disproved by” or is “totally and inexplicably inconsistent” with undisputed contemporaneous documents, it may be struck out; and (5) a Tribunal should not conduct an impromptu mini trial of oral evidence to resolve core disputed facts.”

40. Notwithstanding, Langstaff J in Chandhok & Anor v Tirkey UKEAT/0190/14/KN points out at paragraph 20 that Anyanwu “stops short of a blanket ban on strike-out applications succeeding in discrimination claims” but goes on to say:

“There may still be occasions where a claim can properly be struck out – where for instance there is a time bar to jurisdiction, and no evidence is advanced that it would be just and equitable to extend time; or where, on the

case as pleaded, there is really no more than an assertion of difference of treatment and a difference of protected characteristic which (per Mummery LJ at paragraph 56 of his judgment in Madarassy v Nomura [2007] ICR 867): "... only indicate the possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that on the balance of probabilities, the respondent had committed an unlawful act of discrimination."

41. The Court of Appeal decision of Blockbuster v James [2006] IRLR 630 is the seminal case on how an Employment Tribunal must treat rule 38(1)(b). Sedley LJ states at paragraph 5:

"This power, [of strike out] as the employment tribunal reminded itself, is a draconic power, not to be readily exercised. It comes into being if, as in the judgment of the tribunal had happened here, a party has been conducting its side of the proceedings unreasonably. The two cardinal conditions for its exercise are either that the unreasonable conduct has taken the form of deliberate and persistent disregard of required procedural steps, or that it has made a fair trial impossible. If these conditions are fulfilled, it becomes necessary to consider whether, even so, striking out is a proportionate response. The principles are more fully spelt out in the decisions of this court in Arrow Nominees v Blackledge [2000] 2 BCLC 167 and of the EAT in De Keyser v Wilson [2001] IRLR 324, Bolch v Chipman [2004] IRLR 140 and Weir Valves v Armitage [2004] ICR 371, but they do not require elaboration here since they are not disputed. It will, however, be necessary to return to the question of proportionality before parting with this appeal."

42. In the Court of Appeal decision of Abegaze v Shrewsbury College of Arts & Technology [2010] IRLR 236 at [15] Elias LJ sums up the aspects of the test to be applied in respect of a strike out application under rule 38(1)(b). Elias LJ states :

"In the case of a strike out application brought under [r 38(1)(b)] it is well established that before a claim can be struck out, it is necessary to establish that the conduct complained of was scandalous, unreasonable or vexatious conduct in the proceedings; that the result of that conduct was that there could not be a fair trial; and that the imposition of the strike out sanction was proportionate. If some lesser sanction is appropriate and consistent with a fair trial, then the strike out should not be employed."

Analysis /Conclusions

43. The Respondent's application dated 9 February 2026 was made on the basis of rules 38(1) (b) and (c) of the Employment Tribunal Procedure Rules 2024 (ETPR). Rule 38(1) (b) refers to scandalous, vexatious and unreasonable conduct; Rule 38(1) (c) refers to non-compliance with any of these Rules or with an order of the Tribunal. The Respondent applied for an unless order in the alternative. I considered the oral submissions of both parties.

44. The Claimant had fulfilled the threshold in respect of Rule 38(1)(b). The Claimant was ordered by EJ Tynan to provide further details of her claim by 4 February 2026; to date, the Claimant had failed to comply with this. The Claimant has wilfully not complied; I say this because she was able to comply

with providing the disability impact statement on 28 April 2026. The Claimant's reason for being able to comply with that order but not the order for further and better particulars is that she was not well and that she used her previous disability impact statement from another case and the medical evidence she provided to comply. The problem with the Claimant's response is that, firstly, the Claimant did not provide the specific dates asked for in relation to the disability impact statement but still complied, and secondly, if she was well enough to provide the disability impact statement, she could have provided the further and better particulars.

45. The other reason why I consider that the Claimant has wilfully failed to comply is because the Claimant says that she believed that she could not comply without receiving evidence requested from the Respondent. However, the Claimant was told in no uncertain terms that she didn't need the evidence to be able to comply by EJ Tynan. And furthermore, the Claimant never asked the Respondent for access to the evidence provided by link but asked for general access to the Respondent's system. The Claimant never indicated that she had clicked the link; the Respondent said that their submissions that the Claimant has not clicked the link since responding to EJ Tynan's order and had not explained why she had not complied. Even if the Claimant did click the link, which the ET does not believe that she did, the Claimant never told the Respondent that she had clicked the link and could provide no explanation for why she did not put that information in writing to the Respondent's solicitors as an explanation for why she said she had no access to the evidence that she wanted. It is this failure to mention having clicked the link in the copious correspondence which leads the Employment Tribunal to conclude that the Claimant did not click the link. The Employment Tribunal considers that the Claimant did not genuinely believe that what was preventing her from complying was the lack of evidence from the Respondent. This conclusion is bolstered by the Claimant's admission that she received DSAR documentation, but the reason it was not sufficient was because it was in the Claimant's view 'pedestrian' and there were no emails which included discussions about the Claimant between the Respondent's employees. Discussions the Claimant admitted she had no idea whether they took place.
46. Secondly, in respect of rule 38 (1) (b) claimant or the Respondent (as the case may be) has been scandalous, unreasonable or vexatious. For all the aforementioned reasons set out in respect of the r38(1)(c) gateway, the Employment Tribunal considers that the Claimant's conduct has been unreasonable. In addition, the Claimant's explanation that she believes that she can now comply and couldn't before because she misunderstood what was required of her is not accepted by the Employment Tribunal. The Claimant was again told categorically by EJ Tynan that "*Accordingly, the Claimant must now comply with the Tribunal's orders, even if she is only able to provide approximate dates for certain of her allegations and the gist of what was said or written.*" [80]. The Claimant was therefore not under any illusion that she had to provide details of exact dates or exact matters that she claimed prevented her from complying with the order.

47. However, although the gateways of rule 38 have been met, I declined to exercise my discretion to strike out the Claimant's claim for the following reasons:

- i. The Claimant says that she can now comply. Although she says that she is unwell, she says this doesn't prevent her from complying
- ii. The Claimant now understands exactly what is required of her and has told the Employment Tribunal that she does. The Claimant is capable of complying as she has done so in relation to the disability impact statement.
- iii. As the Claimant can now comply, it cannot be said that a fair trial is not possible. Proceedings are at an early stage; there is no hearing listed.
- iv. The Respondent's objections regarding the length of time before the case can be heard and the failing recollection of witnesses are matters that the Employment Tribunal takes into account in its disposal of this application.
- v. These proceedings were brought on 19 March 2025; although it is over a year since the proceedings were brought, it cannot be said that the Claimant did not comply with the Employment Tribunal's initial order dated 8 September 2025 as there was no date for compliance at that stage. In those circumstances, the Claimant's failure to comply has existed since 4 February 2026, which is 4 months and not the 7 months the Respondent referred to in their submissions.

48. The Employment Tribunal considers that it is appropriate to make an unless order that the Claimant comply within 14 days of today to provide the requisite details. This delay does not make a substantial difference to the timeline compared to the draconian power of strike out. Now that the Claimant has an understanding of what is required of her, the Claimant ought to be given a chance to comply, which the Claimant says that she can do. In coming to this position, the Employment Tribunal had regard to Forrest v Amazon Web Services [2025] EAT 81 where Griffiths J reviewed the principles espoused in Blockbuster v James [2006] IRLR 630 & Barber v Royal Bank Scotland UKEAT/0301/15 (18 January 2018). Griffiths J provided guidance on the approach to deal with deliberate non compliance is to ratchet up compliance. Paragraph 42, Griffiths J says "42. *It is hard to think of a case in which it would be right to go directly from non-compliance with a case management order to striking out for non-compliance, without first trying the effect of an unless order. It is usually best to ratchet up pressure, rather than immediately giving up. The business of courts and tribunals is deciding cases on their merits when a fair trial is possible. Sanctions for breaches of orders are designed to secure compliance. As Simler J said in Baber, "they are not punitive"*.

49. The Respondent's application for strike out is dismissed, and the Employment Tribunal makes an unless order in the following terms:

The facts which you rely on to prove your claim that the respondent has failed to make reasonable adjustments, including:

- 1.1. What it is about the respondent's way of doing things (referred to as a provision, criterion or practice or "PCP") that has put you at a disadvantage compared to a non-disabled person;
- 1.2. How you are or were disadvantaged, in what way and to what extent;

- 1.3. What you say the respondent should have done to prevent the disadvantage (that is, what adjustments should have been made);
- 1.4. When the respondent should have done that;
- 1.5. Whether you say that the respondent knew that you are, or were disabled and if so, when and how the respondent knew, or
- 1.6. Whether you say that the respondent should have known that you are or were disabled and if so, why they should have known?

2. Details of everything you say was harassment related disability, setting out in date order;

- 1.1. what was said or done;
- 1.2. by whom;
- 1.3. to whom;
- 1.4. when, and
- 1.5. where?

3. Details of each and every detrimental (bad) thing you say was done to you because of disability, setting out in date order;

- 3.1. what was been said or done;
- 3.2. by whom;
- 3.3. to whom;
- 3.4. when, and
- 3.5. where?

4. Details of the complaint of discrimination you say you made or assisted with that has resulted in you being treated unfavourably (badly). This is called the “protected act”.

5. Each bad thing done to you which you say was done to you because you did a protected act, setting out in date order:

- 5.1. what was said or done;
- 5.2. by whom;
- 5.3. to whom;
- 5.4. when, and
- 5.5. where?

6. Details of each and every disclosure, (act of whistleblowing) you rely on, setting out in date order;

- 6.1. what was disclosed,
- 6.2. to whom,
- 6.3. when,
- 6.4. where and how, and
- 6.5. which of the following best describes what was disclosed;
 - 6.5.1. a criminal offence has been committed, is being committed or is likely to be committed, if so, explain what;
 - 6.5.2. that a person has failed, is failing or is likely to fail to comply with any legal obligation which they are subject to, if so explain how and what;
 - 6.5.3. that a miscarriage of justice has occurred, is occurring or is likely to occur, if so, explain how and what;
 - 6.5.4. that the health or safety of any individual has been, is being or is likely to be endangered, if so, explain how and what;
 - 6.5.5. that the environment has been, is being or is likely to be damaged, if so, explain how and what;

6.5.6. that information tending to show any matter falling within any one of the preceding paragraphs has been or is likely to be deliberately concealed, if so, how and what.

6.6. Please explain why you say any such disclosure of information is made in the public interest.

7. Set out in date order, a brief explanation of each and every bad thing (detriment) that you say has happened to you because you blew the whistle, including in date order;

7.1. what was said or done,

7.2. by whom,

7.3. to whom,

7.4. when, and

7.5. where?

The Claimant is permitted to, in accordance with EJ Tynan's order dated 27 January 2026:

Accordingly, the Claimant must now comply with the Tribunal's orders, even if she is only able to provide approximate dates for certain allegations and the gist of what was said or written.

Approved By:

Employment Judge Young

Date 29 July 2026

REASONS SENT TO THE PARTIES ON

29 July 2026

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded, you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced, it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>