



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Shahzad
Respondent: London Borough of Newham
Heard at: East London Hearing Centre (video)
On: 24 July 2026
Before: Employment Judge Reid

Representation

For the Claimant: in person, not represented

For the Respondent: Ms S Sullivan

JUDGMENT (Reserved)

1. The Claimant's claim for unfair dismissal (her only claim) is struck out under Rule 38(1)(a) Tribunal Rules 2024.
2. This is because her claim for unfair dismissal has no reasonable prospect of success.

REASONS

Background and issues

1 See preliminary hearing summary dated 24 July 2026 for the background to this hearing. I took into account throughout that the Claimant is not legally represented.

2 Judge Palmer's orders dated 21 August 2025 (para 4) identified the matter to be decided at this hearing namely:

(1) whether the Claimant's claim should be struck out because (a) it had no reasonable prospect of success and/or (b) there had been non-compliance with the Tribunal Rules 2024 or any Tribunal order and/or (c) the claim is not being actively pursued

(2) in the alternative whether the Claimant should be ordered to pay a deposit as a condition of continuing her claim

Background

3 The Claimant's claim is of unfair dismissal. A potential weakness in her claim was first identified at the preliminary hearing on 9 March 2025 (para 28) and she was ordered give reasons by 2 April 2025 why her claim should not be struck out. The Claimant was not at that hearing but she was sent the summary and orders and had been advised why the claim appeared weak. She did not comply with the order.

4 The order was made for a second time at the next hearing on 3 July 2025 with a deadline of 10 July 2025 (para 40) – the Claimant had not attended this hearing but her representative had. She did not comply with the order.

5 The order was made for a third time at the next hearing on 21 August 2025 with a deadline of 11 September 2025 (para 5.1) – the Claimant had attended this hearing with her husband. She did not comply with the order.

6 The only document which appears to be an attempt to respond to the order was her email sent on 17 September 2025 stating that she wished to continue her case now that her health was better. She did not address the specific point about the apparent merits of her unfair dismissal claim. Instead she made a second amendment application – see separate preliminary hearing summary dated 24 July 2026.

7 I asked her at this hearing to now explain to me why in her view it would be wrong to say that her unfair dismissal claim had no reasonable prospect of success. I explained the point again: that when she was dismissed in December 2023 for three incidents in June-July 2023 involving security and residents' safety (regarding the claimant not having returned keys to their proper place, response paras 7-9 and regarding issuing a key to a cleaner – see also dismissal letter dated 30 November 2023) she had already recently received a final written warning dated 14 June 2023 following suspension in November 2022 because she had allowed her daughter access to the residents' premises to use facilities (response para 4-6, a warning she did not appeal). The next incidents in June-July 2023 about the keys were a residents' security/safety issue as had been the November 2022 issue regarding her daughter.

8 The Claimant then made the following points about the claimed unfairness at this hearing (1) that the decision to dismiss did not take into account her health problems and that she had recently returned from sick leave prior to the keys incidents in June and July 2023 (2) the previous final written warning had been unfair because she lived on site (in separate accommodation with her family) and no-one had ever said her family could not use the communal gardens (3) because she lived on site anyone could have knocked on her door if there was a problem (4) it was the line manager's responsibility to check keys

were correctly in the safe and (5) she had 27 years' service. In the context of the amendment application the Claimant had also said at this hearing that the appeal was not impartial. In her appeal against dismissal she had said her health problems (forgetfulness) had not been taken into account and that her dismissal was unduly harsh.

9 The dismissal letter dated 30 November 2023 (in the November 2024 hearing bundle) records that the Claimant was dismissed based on the following three allegations (1) the master keys were lost when in her possession for Hamara Ghar (resulting in expensive new locks having to be fitted) (2) the master keys for Centenary House were not returned by the Claimant at the end of the day and had been needed for an incident to deal with an emergency call from a resident during the night (3) she had misused office warden keys for Centenary House (by providing a cleaner with an office key contrary to instructions).

Relevant law

10 Rule 38(1)(a) of the Tribunal Rules 2024 provides that a Tribunal may strike out all or part of a claim or response on the grounds that it has no reasonable prospect of success. This is a high threshold. The test is not whether there is no prospect at all but whether there is no reasonable prospect.

11 The test the Tribunal applies to an unfair dismissal misconduct claim is firstly whether the employer genuinely believed on reasonable grounds and following a reasonable investigation that the employee had committed misconduct (*British Home Stores v Burchell* [1978] IRLR 379). The second question is then whether the decision to dismiss for misconduct was within the band or range of reasonable responses (*Iceland Frozen Foods v Jones* [1982] IRLR 439). That is a range - from an employer who takes a more relaxed view to an employer who takes a strict view. Decisions within that range will be fair. It is not for the Tribunal to decide what it would have done.

12 The task of the Tribunal is to consider with care the pleaded case and whether on a fair assessment it or any part of it passed the threshold of presenting a reasonably arguable case, taking it at its highest. I considered *Cox v Adecco* [2021] ICR 1307 including as to taking the Claimant's claim at its highest.

13 Where the central facts are disputed, a claim should not normally be struck out, where witness evidence will be required to decide those disputed facts (*Ezias v North Glamorgan NHS Trust* [2007] ICR 1126)

Reasons

14 There is no reasonable prospect that the Claimant will be able to successfully argue that the final written warning was a matter which should not reasonably have been taken into account in the later decision to dismiss. The Claimant did not appeal the final written warning and, as with the subsequent June-July 2023 incidents with the keys, they relate to important matters of residents' safety and security where residents are vulnerable. The warning remained 'live' for 12 months.

15 The Claimant said at this hearing that the final written warning had been unfair because she was not told her family could not access the communal gardens. The warning

was not for that, it was for accessing areas to watch tv and use laundry facilities. The Respondent's Code of Conduct (in the bundle for the original November 2024 hearing) sets out at section 3 the rules about safeguarding Council property.

16 The Claimant says in her claim form that she was dismissed because she had 'misplaced keys'. It was identified in the hearing on 9 March 2025 (para 26.1.5) that she was not accused of or dismissed for 'misplacing keys' and to describe that as the reason she was dismissed was a misrepresentation. The Claimant made no criticism of the disciplinary procedure (including any failure to investigate or the non-impartiality of any appeal) in her claim form.

17 It was not factually disputed by the Claimant that there had been two incidents when she had not returned keys. She said at his hearing that she accepted that she did things she should not have done as regards security after she returned to work after sick leave and she had accepted at the disciplinary hearing that she had not returned the Hamara Ghar keys and apologised for that (see dismissal letter dated 30 November 2023), thereby accepting it was her responsibility. She had also accepted at the disciplinary hearing that she had kept the Centenary House keys but said it had been a genuine mistake, again thereby accepting that it was her responsibility. She disputed giving an office key to a cleaner but the Respondent relied on evidence from the cleaner that the key had come from the Claimant and that the cleaner's access to the office showed that it only happened after the Claimant had returned to work in June 2023.

18 The Claimant also said at this hearing (but not referred to in her claim form) that the Humara Ghar keys incident (when the Respondent had had to change the locks because it did not have the master key) happened not because she had not dealt with keys correctly but because another carer had left the key in a resident's door. She did not say this in her claim form or at the time when she accepted she had not returned them. It is also a misrepresentation of the chronology set out in the dismissal letter dated 30 November 2023 which sets out that another carer found the missing master key after it had been missing for 6 days, before later returning the to the Respondent.

19 Taking the Claimant's case at its highest there is no reasonable prospect that the Claimant will be able to reasonably argue that her dismissal was unfair applying the relevant tests set out above. That dismissal would be more at the harsher end of the range of reasonable responses but not reasonably likely not to fall within that range, given there were now four safety/security incidents, a previous still live final written warning for the first and taking into account the Respondent's responsibilities to residents. The dismissal letter records that her health conditions were taken into account as mitigating circumstances but that her health problems (memory loss) did not outweigh the seriousness of her negligent actions regarding keys to two sheltered housing schemes. It is not the case that the Respondent did not consider them; it just considered that they were insufficient to outweigh the seriousness of her actions.

20 As regards her long service, there is also no reasonable prospect that the Claimant will be able to reasonably argue that her dismissal was not within the band or range of reasonable responses because of her long service, given the need to consider what the Respondent identified as serious negligent actions, even if she may characterise what happened as more minor errors by her. It is not reasonably arguable that her long service outweighed those important considerations.

21 I have considered in particular whether because there is a factual dispute about whether the Claimant gave the office key to a cleaner that might be a reason not to strike out the claim but even putting that allegation to one side she still has no reasonable prospect of showing that taking the final written warning into account and the other two keys incidents that her dismissal fell outside the band or range of reasonable responses.

22 For these reasons the Claimant's claim is struck out under Rule 38(1)(a) Tribunal Rules 2024 as having no reasonable prospect of success.

Approved by:
Employment Judge Reid
Dated: 27 July 2026