



EMPLOYMENT TRIBUNALS

Claimant: A

Respondent: B

Heard at: Cardiff

On: 15 June 2026

Before: Employment Judge S Moore (Sit Alone)

Appearances:

For the Claimant: Litigant in Person

For the Respondent: B assisted by Victoria Jones and Mr Davies, Dewis
Independent Living

JUDGMENT was sent to the parties on 18 June 2026 and full reasons were requested in accordance with Rule 60 of the Employment Tribunal Procedure Rules. The following written full reasons are therefore provided:

FULL REASONS

Background and Introduction

1. This claim was presented on 5 June 2025 following an ACAS early conciliation starting on 27 March 2025 and ending on 8 May 2025. It largely concerns events that were alleged to have taken place on 30 December 2024. I am unclear of the exact effective date of termination at this stage as the Claimant says that she worked for a three month or so period after these events that led to this claim but nothing turns on that for the purpose of my decision.
2. Anonymisation orders have been made in respect of the Claimant, the Respondent (B – the brother) and the claimant's actual employer (C), the sister. C has cerebral palsy and learning difficulties and lacks capacity. It is now agreed C was the Claimant's employer. C lives in the same house as her brother B and the Claimant was her Personal Assistant. The contract of employment was between the Claimant and C with the local authority funding the care via direct access payments. B and C are computer illiterate and do

not have access to emails. They are being assisted by the Dewis Centre for Independent Living who assists C with the direct access payment arrangements and aspects of her care.

3. The Claimant ticked on the ET1, which she completed herself, the box indicating she was bringing a claim of unfair dismissal, sex discrimination and that she was owed other payments. The Claimant brought her claim against the current and only Respondent, B. In summary the Claimant alleges that on 30 December 2024 at her employer's (incorrectly referencing B) home (Claimant's description) where she was employed as a PA to care for C, B was in the kitchen with his friend and the friend made a very upsetting comment to the Claimant, saying that him and B thought the Claimant was a sex offender. This has greatly upset the Claimant and she continues to be unable to move past the comment with her GP noting she is experiencing paranoia and has become fixated on the comment.
4. The Claimant says in the claim form that it is accepted that the B did not make the comment. She also alleges that B did not defend the Claimant, deny it, just nodded his head and laughed hysterically. This was the pleaded case, for the claim against B in relation to that particular incident.
5. The Claimant also alleges in the ET1 that she had caught B on numerous occasions, when his friends had been there, laughing, whispering and making faces behind her back. There was no mention of alleged leering in the ET1.
6. This conduct is relied upon for the constructive unfair dismissal claim and sex discrimination. The monetary claim was not particularised.
7. On filing the response B asserted he was not the Claimant's employer and in fact the employer was C. I have determined in a judgment dated 19 March 2026 that C does not have capacity to take part in these proceedings.
8. On 28 August 2025 the Claimant applied to amend her claim to add C as a Respondent. The application stated as follows:

“However [C] has cerebral palsy and severe learning difficulties, [B] her brother is her appointee and deals with all her affairs including interviewing Pa's and also has a duty of care to ensure a safe working environment as [C] is unable to do this because of her disabilities and is unable to act for herself. My claim still remains against [B], however I am concerned how the tribunal will view this, In all sense and purposes I consider [B] to be the employer as he deals with all the affairs and is an acting employer.”
9. On 7 September 2025 the Claimant made a second application to amend her claim but failed to attach the document setting out what the actual amendments were. The Claimant was directed to provide a copy of the attachment. I am unclear whether it was before Judge Hunt for the preliminary hearing in November 2025. In summary the claimant sought the following amendments:

- To add B as a respondent, describing B as an “appointee and in all sense a de facto employer for his sister C”;
 - B had a duty of care as he deals with all of C’s affairs;
 - Amend the date employment commenced to 28/7/2010;
 - B in response to her comment about being with her partner for 36 years repeated over and over what was said in a mocking way;
 - The claimant repeated the allegations at paragraph 5 but added the word “leering”.
10. C was added as a Respondent for the purpose of service only and the claim was served on C on 8 September 2025. The order adding C as a respondent for service only has later been set aside as a nullity, as it was made when C did not have capacity or a litigation friend. As such the only Respondent to these proceedings is B and he was not the employer.
11. The case came before Judge Hunt in November 2025 and she set out in her list of issues that the Claimant had brought claims of constructive dismissal, direct sex discrimination and harassment related to sex. It incorrectly referenced that she brought a claim for race discrimination. There was no mention of the monetary claim. The list of issues contains wider claims than those in the ET1 claim form. Specifically, there is no mention of the word “leering” or the allegations that the claimant was mocked about her saying she had been with her partner for 36 years in the claim form in the ET1 but it appears in the list of issues. I have assumed this was sourced from the attachment to the amendment application dated 8 September 2025 sent on 10 October 2025 (see above). However Judge Hunt does not say she granted permission to amend the claim in the order. A list of issues is not the pleaded claim.
12. As a matter of law, the claims of unfair dismissal and the monetary claim can only be pursued against C, the employer.
13. B denies all of the Claimant’s claims. He accepts that the comment was made by his friend but says that he should not be responsible for that comment. He denies the other allegations as to his behaviour, both at the time when the comment was made and the other general behaviour that the Claimant has sought to complain of.
14. It is accepted that C was the Claimant’s employer and I have seen the contract of employment. There is nothing in the contract about any agent or anyone acting on C’s behalf.
15. This state of affairs has proved to be very difficult for everyone concerned. I had some explanations before me today as to how this could have come about because it is possible that if C does not have capacity (and it appears her capacity has remained the same) she cannot have entered into a contract of employment with the Claimant which gives the claim another added layer of complexity and difficulty because if there was no capacity to enter the contract, the contract is likely to be effectively void, or to use the proper legal reference, an illegal contract, which is of course, no comfort to the Claimant

at all. This is not something of her making. I have not any determinations on this issue as it was not listed as an issue for this hearing.

16. I had an explanation from Mr Davies as to how this has come about. He explained that at the time the direct payment arrangement was put into place for the Claimant's employment, the Regulations were relatively new in Wales. I should specify that these are not findings of fact, I am just recording what Mr Davies told me. Mr Davies said there should have been "some sort of process" that took C through what was involved in becoming an employer through the direct payment process. However it is accepted that they do not know whether that happened. The Regulations have subsequently changed and such an employment relationship as between the Claimant and C would now not be permissible. Their particular employment relationship and arrangements have not been reviewed and now, of course, that has led to the difficulties that the Claimant, B and C find themselves in the context of this dispute that has arisen in this employment relationship.
17. No decision has been made on any of the Claimant's amendment applications as C does not have capacity. Neither can one be made until a litigation friend is appointed.
18. Following a number of preliminary hearings in which it has been established that there is no one suitable to be appointed as a litigation friend, REJ Davies directed the stay be lifted to list a preliminary hearing to consider whether the claims should be struck out and / or a deposit order made on the basis of the claims having little or no reasonable prospects of success. This was the purpose of the hearing on 15 June 2026.
19. The claimant sent a case statement, mini witness statement, medical evidence and a copy of a text message exchange in advance of the hearing. I had regard to and considered all of these documents.
20. The Claimant sought to significantly expand her claims in the case statement mini witness statement submitted at the hearing. She stated that the main focus should be on the respondent's behaviour (meaning B) following the comment and his previous course of conduct. The claimant asserted B was "an authorised agent acting for the employer". This was the first time the claimant has sought to argue B was an agent. The claimant then added new allegations regarding B's behaviour on 3 January 2025 about B glaring. The witness statement expanded on the alleged leering and also alleged for the first time that B had regularly "looked her up and down" turn his head and eyes would follow her up the stairs.
21. In submissions the Claimant wanted to give new evidence as to why B should be treated as an agent under the Equality Act 2010. B had not previously been notified of this evidence nor had he had chance to prepare or respond to it.

The Law

22. In Malik v Birmingham City Council UKEAT/0027/19, Choudhury J summarised the law on strike out:

“It is well-established that striking out a claim of discrimination is considered to be a Draconian step which is only to be taken in the clearest of cases: see Anyanwu & Another v South Bank University and South Bank Student Union [2001] ICR 391. The applicable principles were summarised more recently by the Court of Appeal in the case of Mechkarov v Citibank N.A [2016] ICR 1121, which is referred to in one of the cases before me, HMRC v Mabaso UKEAT/0143/17.

[31] In Mechkarov, it was said that the proper approach to be taken in a strike out application in a discrimination case is that:

(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.”

[32] Of course, that is not to say that these cases mean that there is an absolute bar on the striking out of such claims. In Community Law Clinics Solicitors Ltd & Ors v Methuen UKEAT/0024/11, it was stated that in appropriate cases, claims should be struck out and that “the time and resources of the ET's ought not be taken up by having to hear evidence in cases that are bound to fail.”

23. The Employment Appeal Tribunal held that the striking out process requires a two-stage test in HM Prison Service v Dolby [2003] IRLR 694, and in Hassan v Tesco Stores Ltd UKEAT/0098/16. The first stage involves the finding that one of the specified grounds for striking out has been established; and, if it has, the second stage requires the Tribunal to decide as a matter of discretion, whether to strike out the claim.

24. As a general principle, discrimination cases should not be struck out, except in the very clearest circumstances, see Anyanwu v Southbank Students' Union [2001] IRLR 305.

25. The Tribunal is competent to strike out a discrimination claim as was made clear in Ahir v British Airways Plc [2017] EWCA Civ 1392 in which Lord Justice Elias stated:

26. *“Employment Tribunals should not be deterred from striking out claims, including discrimination claims, which involve a dispute of fact if they are*

satisfied that there is indeed no reasonable prospect of the facts necessary to liability being established, and also provided they are keenly aware of the danger of reaching such a conclusion in circumstances where the full evidence has not been heard and explored, perhaps particularly in a discrimination context”.

27. If it is not possible for a claim to succeed on the legal basis put forward it may be struck out, as per **Romanowska v Aspiration Care Ltd UKEAT/0015/14.**
28. S110 Equality Act 2010 deals with liability of employees and agents.
29. **Selkent Bus Co Ltd v Moore 1996 ICR 836 EAT** sets out guidance for Tribunals when considering amendments. In deciding whether to exercise discretion to grant leave for amendment of an originating application, a tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. Relevant circumstances include:
 - (a) The nature of the amendment, i.e. whether the amendment sought is a minor matter such as the correction of clerical and typing errors, the addition of factual details to existing allegations or the addition or substitution of other labels for facts already pleaded to, or, on the other hand, whether it is a substantial alteration making entirely new factual allegations which change the basis of the existing claim.
 - (b) The applicability of statutory time limits. If a new complaint or cause of action is proposed to be added by way of amendment, it is essential for the tribunal to consider whether that complaint is out of time and, if so, whether the time limit should be extended under the applicable statutory provisions.
 - (c) The timing and manner of the application. Although the tribunal rules do not lay down any time limit for the making of amendments, and an application should not be refused solely because there has been a delay in making it, it is relevant to consider why the application was not made earlier. An application for amendment made close to a hearing date usually calls for an explanation as to why it is being made then and not earlier, particularly where the new facts alleged must have been within the knowledge of the applicant at the time the originating application was presented.
30. **Abercrombie and others v Range Master Limited [2013] EWCA Civ 1148** provides that when considering applications to amend which arguably raises new causes of action the focus should not be on questions of classification but on the extent to which the new pleading is likely to involve substantially different areas of enquiry than the old; the greater the difference between the factual and legal issues raised by the new claim and by the old, the less likely it is that it will be permitted.
31. **Vaughan v Modality Partnership [2021] IRLR 97.** In deciding whether to exercise the discretion to allow an amendment, the Tribunal has to balance the injustice and hardship of allowing the amendment against the injustice

and hardship of refusing it. Such relevant circumstances include consideration of the nature of the amendment, the applicable time limits and the timing and manner of the application. The real practical consequences of allowing refusing amendment should underlie the entire balancing exercise.

Conclusions

32. The Claimant has brought a claim against someone who is not her employer. The only way the sex discrimination complaint could proceed is if the Claimant had brought a claim against B, as an agent of C or is given permission to add C as a respondent.
33. Did the Claimant bring a claim that could sensibly be understood to be a claim under s110 EQA 2010?
34. The Claimant has asked to amend her claim to add C to the proceedings who is the correct employer. She has also made a separate applications to amend and expand the claims to include further complaints against B that make it more clear that the Claimant is asserting that the alleged behaviour might be sex discrimination. In my judgment the claim does not contain a discernible claim for sex discrimination and would need an amendment.
35. The Claimant has not pleaded at any stage in an ET1 or amendment application, what she appears to be advancing now, that B was an agent of C under Section 110 of the Equality Act. I am therefore unable to entertain that submission. B has not had the opportunity to address these new allegations set out in the case statement and mini witness statement and C is unable to do so. In my judgment, it cannot be sensibly inferred from any of the ET1 contents or any of the two amendment applications the Claimant has already made.
36. In relation to the discrimination claim as set out in the ET1, in my judgment, there is no prospect of the Claimant being able to establish that C or B could be vicariously liable for the sex offender comment by B's friend or that it is was because of the protected characteristic of sex or related to sex as required by s13 or s26 EQA 2010. I further conclude that even taking the alleged conduct of B at its highest (that he did not deny the comment, did not defend the claimant, nodded and laughed hysterically) that this could not amount to sex discrimination or sex related harassment. A person of either sex would be offended by such a comment and behaviours and the only link to the claimant being a woman is the discussion that it was unusual for the offender to be a woman.
37. I do not consider the original claim in relation to B allegedly laughing whispering and making faces to have any prospect of amount to sex discrimination or sex related harassment for the same reasons. It is telling in my judgment that the claimant has sought to expand this behaviour to include the word "leering" as is the absence of this word in the original complaint.

38. Whilst I acknowledge the strict requirements on striking out discrimination claims before evidence is heard in my judgement this is an appropriate and proper step to take in this unusual case.
39. I also considered what the prospects were of the amendments being permitted should C be appointed a litigation friend. I concluded there was no prospect that such an amendment would be permitted for the following reasons.
40. There will be a substantial delay in reaching a position where the amendment application can even be considered as C requires the appointment of a litigation friend. Whilst this is not of the claimant's making, there is currently no provision within the Employment Tribunal Rules of Procedure enabling a judge to order such an appointment and this would be a matter of discretion therefore of the Official Solicitor. All other avenues for appointing a litigation for C have been exhausted.
41. The claim was presented on 5 June 2026 concerning allegations dating back to 2024. Even now the allegations concerning the monetary element of the claims are unclear.
42. The nature of the amendments sought are substantial and have sought to expand the claim both factually and legally. The amendments are for complaints that are out of time. Apart from the claimant being a litigant in person, there is no explanation before me as to why the claimant did not properly set out her claims in the ET1.
43. In my judgment there could be no plainer set of circumstances where the balance of prejudice lies with B and C if the amendment was permitted they would be required to address allegations likely to have occurred years previously based on mainly highly disputed events for which there is little or no evidence other than oral testimony. I consider this would result in a fair trial not being possible.

Approved by:

Employment Judge S Moore
21 July 2026

Sent to the parties on:
03 August 2026

Kacey O'Brien
For the Tribunal Office.

Notes

All judgments (apart from judgments under Rule 51) and any written full reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. 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:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/