



EMPLOYMENT TRIBUNALS

Claimant: Ms D Fox

Respondent: Ramsay Health Care (UK) Operations Limited

Heard at: Manchester (in public; by CVP) **On:** 20th May 2026

Before: Employment Judge Anderson (sitting alone)

Representatives

For the claimant: No Attendance

For the Respondent: Miss Bairstow (Counsel)

Summary oral reasons having been given at the hearing on the 20th May 2026 with **Judgment** having been sent to the parties on 8th July 2026, and on 21st July 2026 full reasons were requested in accordance with Rule 60 of the Employment Tribunal Procedure Rules. The following written full reasons are therefore provided.

REASONS

Introduction

1. In the Preliminary Hearing in January 2025, the Claimant is recorded as bringing the following claims:
 - a. Direct age discrimination
 - b. Direct disability discrimination
 - c. Harassment related to age
 - d. Harassment related to disability
 - e. A failure in the duty to make reasonable adjustments (This was identified as a complaint in the narrative, though not in the claimant's summary)
 - f. Victimisation

- g. Public Interest Disclosure – detriment.
- h. Constructive unfair dismissal
- i. Unlawful deductions (overtime)
- j. Breach of contract (notice pay)
- k. Holiday Pay

Postponement

2. On the 18th May 2026, the Claimant applied to postpone this Preliminary Hearing. The basis included assertions that she needed more notice of the hearing, is no longer represented and has mental ill health.
3. That application was refused by Employment Judge Butler. He cited the late nature of the application, the lack of exceptional circumstances. As to what was decided would be a matter for the Judge at the hearing and there was a lack of medical evidence.
4. This morning, I received a renewed application from the Claimant attaching a letter from her GP and a medical record entry.
5. Prior to the hearing commencing, I asked the Tribunal Clerk to telephone the Claimant. The clerk called the only number available to the Tribunal, which is on the ET 1. The person who answered was an unidentified female who said she was a friend of the Claimant. She said that the Claimant was seeking medical treatment and would not be attending.
6. I refused the application to postpone. My reasons were as follows:
 - a. This was a renewed application. It was made at short notice. The exceptional circumstances provisions apply as noted previously by Employment Judge Butler.
 - b. There was however a material difference with the application that was before Employment Judge Butler in the sense that the claimant had now supplied medical evidence in support of her application.
 - c. That medical evidence does give some information and detail. It identifies that the Claimant may have PTSD and it refers to her current self-reporting symptoms and the difficulty that she is having in the litigation. It does not address in specific and clear terms the claimant's fitness to attend the hearing and her prognosis amongst other matters.
 - d. Having regard to the overriding objective and the history of this litigation it is in the interests of justice to refuse the application. The Claimant appears to have difficulty in dealing with this litigation and in terms of progressing this litigation. Part of her upset appears to be the litigation itself. There is no indication that this state of affairs will improve.

- e. This litigation has been going on for two years and has been the subject of an unless order.
 - f. The nature of the hearing today was to determine whether or not the Claimant had materially complied with the unless order. In that sense, the key event had already occurred. Today was about making submissions on the point. Whilst I would have preferred to have the Claimant appear before me today so that I could hear from her, I do have the Claimant's letter stating at page 219 of the bundle in which she makes submissions in response to the correspondence of the Respondent stating that there has been non compliance with the unless order.
 - g. if I were to postpone the hearing this could well involve matters being postponed through to some point into 2027 this would mean that an unless order made in 2025 still had to be adjudicated upon as to whether there had been material compliance. That is not a sensible state of affairs.
7. In terms of proceeding, I determined that it was appropriate to proceed under Rule 47 of the Employment Tribunal Procedure Rules 2024. Again, this litigation had been going on a long time and progress needed to be made. As to whether or not there have been material non compliance with and unless order needs to be determined. This is only a preliminary point in the litigation, if it were to continue much more was still needed in order to progress this matter to a full hearing.

History of the Litigation

8. The history of the litigation is not strictly relevant to whether or not the unless order has been materially complied with. However, I consider it to be of assistance to set out matters in this way so that the history of the litigation is consolidated into a readable document.

DATE	EVENT
12 th March 2024	EDT
23 rd July 2024	ET 1
23 rd August 2024	ET 3
20 th January 2025	PH with EJ Benson
30 th January 2025	PH CMO sent
17 th February 2025	Amended summary due- extension was agreed to 5 th March 2025 by the parties.
6 th March 2025	The Claimant's rep seeks formal variation. On 10 th March EJ Allen

	granted the variation. 1New deadline of 14 th March.
17 th March 2025	Claimant's rep wrote to the Respondent, assured it would be sent in 1 further week.
24 th March 2025	Respondent wrote to ET stating nothing received. Asked for realistic timeframe.
27 th March 2025	Employment Judge Slater asks the parties for a new timetable to be agreed. She express concern that there is no final hearing listed.
28 th March 2025	The Respondent sets out a proposal to the Claimant.
22 nd April 2025	The Respondent spoke to the Claimant as nothing had been received.
9 th May 2025	The Respondent's first application for strike out or an unless order.
23 rd May 2025	The Claimant responded to that application. A further date of 30 th May 2025 was suggested.
2 nd June 2025	The Respondent wrote to the Employment Tribunal having not received communication prior to 30 th May 2025. The Respondent invited the Tribunal to strike out the claims as per the earlier application.
2 nd June 2025	The Claimant serves the first version of the amended particulars. There is no Schedule of Loss.
16 th June 2025	Claimant serves impact statement and some medical records.
24 th June 2025	The Respondent made second strike out /unless order application. Amended particulars inadequate. No schedule of loss.
3 rd July 2025	EJ Barker – wrote to parties – no unless order would be made as C started to comply. Warned of possible future unless order.
7 th July 2025	Respondent wrote to ET – queried whether EJ Barker seen 24 th June second application. Was re-sent on the same day by the Respondent.
18 th August 2025	Unless Order of EJ Barker sent to the parties
18 th August 2025	REJ Franey sends out letter to the parties re EJ Barkers unless order

15 th September 2025	Claimant send document re 'unless order compliance' and Schedule of Loss.
22 nd September 2025	The Respondent requested confirmation that the claim was struck out.
3 rd December 2025	Notice of Preliminary Hearing
11 th March 2026	The Respondent seeks further clarification of the unless order.
1 st May 2026	Order from EJ Tobin.
18 th May 2026	The Claimant makes application to postpone.
19 th May 2026	EJ Butler refuses the Claimant's application to postpone.

9. The claimant has submitted her ET 1 with the assistance of a friend. That friend was on record for the Claimant and is a practising solicitor. Therefore at the preliminary hearing in January 2025 Employment Judge Benson with the knowledge that the Claimant was represented, made orders for the clarification of the claim on the basis that the Claimants representative would comply with the orders or would be in a position to comply with the orders based upon the instructions from the Claimant.
10. It is evident from the chronology above that did not occur. From this point onwards the case has been litigated in writing, with periods of non compliance. There have been multiple attempts to clarify the claimants claim and that is ultimately resulted in the unless order. That unless order was made when the Claimant was professionally represented by someone with a practising certificate and therefore the issue of non compliance could be seen in this context.

Wording of Unless Order

11. The relevant wording of the unless order is as follows:

Unless, by the date 28 days from when this order was sent to the parties, the claimant:

1. Provides to the respondent a statement of the legal complaints brought in relation to each paragraph of the factual allegations set out in the existing particulars of claim, or if a paragraph provides background information only, confirmation of the same. This may be done by way of annotations or additions to the existing particulars of claim; and
2. Provides to the respondent a Schedule of Loss

the claims, or such of them as any non-compliance relates to, will stand dismissed without further order.

12. Reasons were given for the making of the unless order.
13. REJ Franey's letter of the 18th August 2025 provides additional context. He explains in more detail his interpretation as to what is required. Ultimately, what the Tribunal wants is to create a workable list of issues that flows from the particulars of claim.

The Law

14. An unless order is a conditional Judgment.
15. In respect of an unless order whereby the sanction for non compliance is strike out, the strike out occurs by way of automatic operation of law at that point in time.
16. At the hearing today, I am not deciding whether or not to strike out the claims of the Claimant afresh. Rather, I am determining whether or not there has been material non compliance with the unless order.
17. Tattersall v Mersey and West Lancashire Teaching Hospitals NHS Trust [2024] EAT 24 is of assistance in that Linden J and members considered previous authorities such as Uwhubetine v NHS Commissioning Board England UKEAT/0264/18 and Minnoch v Interserve FM Limited [2023] ICR 861.
18. At para 73 of the Judgment it is stated:
- “... it therefore is not the function of the ET, when considering whether there has been compliance, to revisit the question whether the unless order should have been made in the first place.”
19. As to the process to be followed, Wentworth-Wood v Maritime Transport Limited UKEAT/0316/15 was followed in support of the proposition that there is no mandatory procedure to be followed in determining whether there has been material non compliance.
20. Paragraphs 75 and 76 of the Judgment assist in understanding what is 'material non-compliance'
- “75. Third, the phrase “*material non-compliance*” in the caselaw reflects the way that it was put by Lord Justice Moore-Bick in *Marcan Shipping (London) Ltd v Kefalas* [2007] EWCA Civ 463, [2007] 3 All ER 365 at [34], where he said ‘*the sanction embodied in an unless order in traditional form takes effect without the need for any further order if the party to whom it is addressed fails to comply with it in any material respect*’. (emphasis added). This was adopted by Mr Justice Langstaff in *Johnson v Oldham Metropolitan Council* UKEAT/0095/13.

He went on to say that *“It follows that compliance with an order need not be precise and exact”* [7] and that a qualitative rather than a quantitative approach should be taken to this question. But it is important to note that he was referring to a case in which there had been an order for further particulars, and particulars had been provided, but it was said that the unless order had not been fully complied with. In such a case, the question would be whether the party providing the particulars had in substance complied with the order.

76. There may be cases where there is compliance with an order but it is imperfect, and the question arises as to whether the imperfection is material. But, even in those cases, the ET proceeds on the basis that the order is a given and it asks whether the failure is immaterial in the sense of trivial or irrelevant. Where there has been no compliance with an unless order, it is hard to envisage any circumstances in which it might be held that there had not been a failure to *“comply with”* it and/or a failure to comply with it in a *“material respect”*. It would be contrary to the principle that the order is a given, and that orders of the tribunal must be complied with, for a party to argue that although they had not done so this was immaterial.”

21. In general terms, whilst the Tribunal takes steps in so far as it is reasonable to place the parties on an equal footing in accordance with the overriding objective, I would note that it is not the role of the Respondent or the Tribunal to do the Claimant’s job for her. It is her claim, it is her choice which claims she pursues, what allegations she makes and how she puts her case.

Conclusions

22. The test is whether there has been material non compliance with the unless order. As I emphasised to the Respondent during the course of the hearing, I have sought to avoid being pulled into the merits of the claims and have sought to determine the extent to which the claims can be identified.
23. The starting point in determining this is the wording of the unless order. In this case, I also have the correspondence of REJ Franey as to how the unless order is to be interpreted.
24. In looking at this, I accept that there is some tension here as to what constitutes compliance. The problems with unless orders are well known. The Respondent’s detailed submission interprets the unless order with reference to the history of the litigation and the underlying purpose of what the order was trying to achieve. The Claimant’s interpretation is a narrower one. I accept that compliance need not be exact and that a qualitative approach rather than a quantitative approach is needed. The underlying mischief is that the Claimant’s case needs to be understood and that a list of issues should be capable of being drawn up at a case management hearing.
25. REJ Franey does refer to ‘primarily just’ in his interpretation and references the need for paragraph numbers to be given. The hope was plainly that things

would be more straightforward as a result. That has not been achieved. I accept the Respondent's submission that what has been left is not sufficiently coherent so as to be properly understood.

26. A document has been provided by the Claimant which seeks to comply with the unless order. In a detailed letter dated 22nd September 2025, the Respondent submits that there has been material non compliance with the unless order. In reply, the Claimant disputes that this is the case. Given the Claimant's absence from this hearing, I have read that response and taken it into account in the sense that I have treated it as submissions for the hearing today. As this document post dates the time for compliance with the unless order, it cannot form part of the compliance with the unless order.
27. In relation to the vast majority of claims, I accept the Respondents submission that there has been material non compliance. In so doing, I do not seek to repeat the contents of the lengthy letter dated 22nd September 2025, however I record that save in relation to the claims of unlawful deduction from wages and holiday pay, I have accepted the submissions of the Respondent as set out in that letter.
28. The Respondent's first point is that without an application to amend, the Claimant has expanded upon her particulars and that this is in direct conflict with the unless order. The basis for the conflict is that the expansion makes matters less clear when the unless order is seeking to achieve clarity. They have highlighted relevant parts of the pleading. I accept that this was not the purpose of the unless order. Any amendment should be dealt with formally. They also make the point that this is contrary to REJ Franey's letter suggesting the particulars of 2nd June should be withdrawn. In this sense, I accept that in the case being expanded in this way, there has been material non compliance.
29. Notwithstanding this finding, I will also go on to consider each claim individually as well.
30. Regarding reasonable adjustments, the Respondent complains that this claim has been added. Paras 16 & 32 of the Claimant's document refer to the failure to make reasonable adjustments. However, reading those paragraphs, it is not possible to discern the point advanced, the PCP or the substantial disadvantage. The underlying purpose of the unless order was to enable the reader to understand the claims being made. It is not possible to understand the basis on which it is said a reasonable adjustments claim is made. It is not possible to draw up a list of issues based upon this pleading. I consider this to be material non compliance.
31. In respect of direct age discrimination, reference is made to para 41, it refers to "acts". It is not apparent what is the allegation of age discrimination. There is a

historical reference to shift changes being made in March 2022 and there is an undated reference to a comment being made.

32. In respect of the reference to para 51, this is done under the heading of direct age discrimination but also references section 26 Equality Act 2010. Two comments are then referred to, one which is apparently historical from years previously in 2023 and then a generalised assertion regarding references to retirement which are undated.
33. I accept that in relation to the complaints of age discrimination, the references to paras 41 and 51 are an attempt at compliance. However, on balance, I accept the Respondent's submission that there is material non compliance in that further work must be done on the pleading before it is suitable for a list of issues. Given the historical nature of the points, it is less clear what is background and what is said to be an act that is being pursued.
34. In respect of direct disability discrimination, the Claimant refers back to paras 16, 23, 32, 41, 42-47 and 49. It is not clear which disabilities relate to which alleged detriments. Some paragraphs are under the heading of 'The Claimant's Protected Characteristics' in which she sets out the impairments relied upon and some are outside of those paragraphs. Whilst I accept paragraphs have been referenced in the sense that there is a list, it is far from clear what the specific detriments are.
35. In respect of harassment related to disability this is not referenced with reference to paragraph numbers at all. There has been material non compliance.
36. In respect of public interest disclosure, no specific paragraph numbers are identified. The words protected disclosure have been added at the end of some paragraphs as have the words detriment. However, significant text has been added without an application to amend, and the situation is frankly incoherent. The Respondent made detailed submissions, identifying the lack of particulars in respect of what is said to be a protected disclosure and what is said to be the specific detriment caused by it. I accept those submissions. The reader is left to do the work and ascertain the Claimant's case, both in terms of understanding what is said to be a disclosure and why and what is then caused by that. There has been material non compliance.
37. In respect of the claims of victimisation no protected act is clearly identified. Para 26 has had the word 'protected act' referenced next to it but there is nothing in the pleading that would identify it as something falling within the wide terms of section 27 Equality Act 2010. Paras 26, 36 and 48 are then referenced as the detriments. Given that para 26 is said to be the protected act, there appears to be conflation between the protected acts and the detriment alleged.

It is simply too difficult, to ascertain the specific victimisation claim(s) that are being made without the Tribunal descending into the arena and making the Claimant's case for her. There has been material non compliance

38. In respect of constructive unfair dismissal, the pleading simply refers to the entirety of the pleading above. This is exactly the mischief that the unless order and the letter from REJ Franey was seeking to avoid. Some paragraphs themselves do reference 'unfair dismissal' but there is no wider context at all. The reader is left to do the work. There has been material non compliance.
39. In respect of notice pay, there is an assertion of entitlement, but no paragraph is referenced as required by the unless order. I accept that given the constructive unfair dismissal claim, a notice pay claim could be capable of being understood in that context without further particularisation. The non compliance here therefore is effectively parasitic on the constructive unfair dismissal not being correctly pleaded in compliance with the unless order. The pleading of the constructive unfair dismissal breaches is needed in order to plead the wrongful dismissal claim.
40. I consider that there has been material compliance with the unless order in respect of the claims for unlawful deduction from wages and failure to pay holiday pay. These claims have a statement of legal complaints and contain the factual allegations. A Judge does not need to step into the arena in order for these claims to proceed. Whilst there may be minor imperfections, there is sufficient information to the standard required by the unless order. Based upon the pleading, it is possible to draw up a list of issues. A separate CMO has been produced.
41. In determining that there is sufficient compliance in respect of wages and holiday pay, I record that this is not a comment on the merits of those claims. Nothing in the exercise that I carried out at this Preliminary Hearing takes into account the defence advanced by the Respondent or the likelihood of the claim succeeding.
42. I accept that given the Claimant did produce a document seeking to comply with the unless order, this conclusion may appear harsh. There is an ostensible pleading, albeit one with significant difficulties. This must be seen in the context of the fact that this was not a first pleading in which we were holding a first case management hearing and refining matters. Many previous attempts to ensure the litigation progressed had been attempted previously. The result was an unless order, which by its very nature is draconian.
43. The Claimant is now a litigant in person. I have in mind the overriding objective to ensure parties are on an equal footing. I expressly do not invite an application for reconsideration. I simply refer to the fact that the case law I have highlighted above indicates that if the Claimant considers that the operation of

the unless order has been unduly harsh, that she can demonstrate subsequent compliance and that it is necessary in the interests of justice for it to be reconsidered or for subsequent clarification to be taken into account via reconsideration then it is possible to make an application for reconsideration, which is in effect an application for 'relief from sanctions'. I express no view on whether such an application would succeed. It is a matter for the Claimant.

Employment Judge Anderson

3rd August 2026

JUDGMENT SENT TO THE PARTIES ON

11 August 2026

FOR THE TRIBUNAL OFFICE

Notes

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