

Neutral Citation Number: [2026] EAT 135

Case No: EA-2022-001495-NK

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 10 September 2026

Before :

HER HONOUR JUDGE JOFFE

Between :

MR JOHN GRANTHAM

- and -

Appellant

BOURNEMOUTH, CHRISTCHURCH AND POOLE COUNCIL

Respondent

Mr John Grantham the Appellant, in person
Mr Adrian Peck (instructed by Bournemouth, Christchurch and Poole Council) for the Respondent

Hearing date: 20 August 2026

JUDGMENT

SUMMARY

Practice and procedure

The claimant's claims were dismissed after his failure to comply with an unless order. His unfair dismissal claim was subsequently permitted to proceed after a partly successful application under what was then rule 38(2) of the 2013 Rules of Procedure but struck out after further failures to comply with case management orders. The same employment judge also refused to reconsider the dismissal of the claimant's other claims.

The claimant appealed both orders on the basis that the EJ had failed to take into account a letter from his psychologist which set out his impairment of autism and its effects. The letter was relevant to the proportionality assessment on the strike out application and the interests of justice test on the reconsideration application.

Held: Although it was an error in the exercise of his discretions for the EJ to fail to take into account the psychologist's letter, it could have made no difference to the outcome of the applications. In particular the psychologist's letter did not suggest adjustments which would enable a fair trial to take place, bearing in mind the procedural history, nor did it account for the persistent non-compliance with orders.

HER HONOUR JUDGE JOFFE:

Introduction

1. This is an appeal against a judgment of Employment Judge Cadney sent to the parties on 26 January 2022, in which the employment judge (‘EJ’):

- declined to reconsider a judgment of Employment Judge Emerton declining to set aside the dismissal of the claimant’s claims apart from his unfair dismissal claim;
- struck out the claimant’s unfair dismissal claim.

2. In respect of both of those decisions, the claimant contends that the EJ failed to take into account a medical report he had submitted from a psychologist, Dr Edwards, which he says should have informed the view taken as to the effect of the claimant’s impairments on his ability to comply with case management orders and the reasonable adjustments he required.

3. For the sake of clarity, I refer to the parties as ‘claimant’ and ‘respondent’ as they were below.

4. Prior to the hearing, the claimant had written to the Appeal Tribunal to explain his requirement for reasonable adjustments due to his Autism Spectrum Disorder, also known as Autistic Spectrum Condition (‘ASC’), and other impairments. We had a helpful discussion at the outset of the hearing about what the claimant needed. He told me that he might need time to catch up making notes of counsel’s submissions. Mr Peck was happy to pace his submissions and pause as necessary and the claimant said that he would indicate if he needed a break. I told the claimant I would do my best to ask questions that were not in multiple parts but that he must not hesitate to tell me if he had not understood a question I asked about his appeal.

5. We had a natural break over the lunch hour so the claimant could think about his submissions in reply and a further short break when the claimant was having difficulty ordering his thoughts. On

the whole, the arrangements appeared to be satisfactory but it was clear the claimant struggled to structure and articulate his thoughts. I was grateful to him for his very significant efforts in difficult circumstances and for the clarity and focus of his skeleton argument. I was also grateful to Mr Peck for his courtesy and cooperation with the arrangements.

Background

6. The proceedings in the Employment Tribunal had a long and difficult history. In order to understand the decisions made, it is necessary to understand that history in some detail.

7. As long ago as 12 October 2018, the claimant was dismissed summarily by the respondent for a reason the respondent said related to conduct.

8. On 17 March 2019, the claimant presented a claim form in which he made claims of unfair dismissal and disability discrimination. The nature of the disability claims was unclear and it was also not clear why the claimant said the dismissal was unfair. The claimant asked in his claim form for suspension of the tribunal process to allow him more time to prepare, due to his mental impairments and lack of access to documents needed for his defence. It is relevant to note that, at this point, the claimant had not been diagnosed with ASC. There is however reference in the claim form to ‘severe stress and adjustment disorder’ and a ‘possible learning disability’.

9. On 21 March 2019, the proceedings were stayed for six weeks and the respondent was not initially required to submit a response. In fact no action was taken on the proceedings for some time.

10. The respondent wrote to the Tribunal on 1 May 2019 requesting consideration of strike out, as it said that the claims had no reasonable prospects of success. On 2 May 2019, the claimant wrote to the Tribunal asking for more time to prepare his case. On 4 June 2019, Regional Employment

Judge ('REJ') Pirani listed a hearing to consider strike out / deposit orders to take place on 19 September 2019.

11. On 16 September 2019, the claimant contacted the Tribunal to say that he was experiencing poor mental health and might be diagnosed with autism; he asked for a postponement of the hearing,

12. The hearing on 19 September 2019 went ahead before EJ Emerton. The EJ's detailed case management summary (sent to the parties on 7 October 2019) bears close attention. The hearing was extended for 'considerably longer' than its three hour listing. The EJ did not strike out any claims or make deposit orders. It appears that he did what EJs are enjoined to do and rolled up his sleeves to try and understand the issues. This proved difficult and he recorded: 'The tribunal went on to seek to enable the claimant to explain the basis of his various claims. It should be noted that the claimant appeared to find the process a stressful one, and clearly (and vocally) resented the judge's attempts to assist him.' The EJ said that he had taken matters as far as he was able in the available time but that there was a need for detail to be clarified in writing. It is apparent from the case management summary that the EJ explained what causes of action he believed the claimant might be pursuing and what information was required for each claim. He gave orders for the claimant to provide further information about his claims and medical evidence and a disability impact statement. The EJ said that the claimant had been given 'an unusually long time (at his request) to marshal his thoughts and obtain medical evidence'.

13. The EJ recorded that the claimant did not request any adjustments in his claim form or at the hearing but the EJ nonetheless suggested that if the claimant in fact required adjustments, these could be addressed at the next preliminary hearing, which was listed for 24 February 2020 to consider the issues, further case management, the question of disability and other applications it might be

appropriate to hear such as applications to strike out.

14. The EJ also recorded:

‘29. The claimant expressed himself as unhappy to be asked about the details of how he was said to be disabled, but the judge explained that it was important, if he was to be able to pursue a claim for disability discrimination, that he was able to explain why he believed that he was a disabled person, and that the claimant would need be in a position to provide evidence. Matters were left as follows: the claimant would probably be relying upon the conditions of depression and anxiety, but would confirm his case in writing.

30. The claimant also explained that he was awaiting an assessment, for which there was a substantial waiting list, which might also result in a diagnosis of autism or Asperger’s Syndrome.’

15. By 30 November 2019, the claimant had not complied with any orders and he wrote to the Tribunal asking for more time to comply. He said he had ‘anxiety related avoidance of work necessary to progress [his] claim’ but he did not attach any medical evidence.

16. On 6 December 2019, the respondent wrote to the Tribunal setting out a summary of the claimant’s non-compliance with orders and renewing its application for strike out. The Tribunal sent the claimant a strike out warning on 23 December 2020.

17. On 2 January 2020, the claimant wrote to the Tribunal saying that he was unable to give reasons to resist strike out due to his mental health but requesting a hearing at which he could give such reasons.

18. On 31 January 2020, there was a telephone preliminary hearing at which EJ Emerton cancelled the previously listed case management preliminary hearing and listed a two day preliminary hearing on 13 and 14 May 2020 to consider matters such as disability, strike out and finalising the issues. Again the claimant did not ask for any adjustments but told the EJ that he might acquire a medical report indicating what adjustments would be appropriate. Although the EJ declined to strike out the claims, he went on to say (in a passage in bold in the original):

‘13. The judge wished to make it entirely clear to both parties that the respondent had certainly set out an arguable case under rule 37 as to why the claim should [be] struck out, and it would be unlikely that the claimant would be given another chance. Unless he complied with all the orders, it was difficult to see how the claim could be progressed. If the claimant again failed to comply with all orders in a timely way, it was inevitable that the respondent would repeat its strike-out application, which might succeed next time.’

19. As for medical evidence:

‘14. The claimant explained that in December he had received his medical records from the GP practice, and that he had all the medical records he needed (including copies of fit notes and OH reports), although he might ask for more, and it would take very little time to obtain any other medical report or information which he wanted to reply on. He was unable satisfactorily to explain why he had not taken further action on these records, knowing he was already well out of time for complying with orders. He was also ordered to provide medical evidence to support his contention that his psychiatric condition had caused or contributed to his failure to comply with orders.’

[Emphasis added]

20. The claimant was given further time to comply with orders. The EJ commented that the claimant had thus far ‘been given a very substantial period of time to comply with orders.’

21. There was only partial compliance with the extended orders. On 13 March 2020 (the extended date for compliance), some medical records were sent. There was no disability impact statement and no further information about the claims. On 18 March 2020, the claimant asked for more time, saying that the delay was due to severe depression and anxiety. There was then a series of communications from the claimant during the rest of March and first half of April 2020 expressing hope that he would be able to complete work on the directions within various short periods of time and asking serially for short extensions.

22. On 22 April 2020, the Tribunal sent the parties an unless order which had been made by EJ Rayner on 20 April 2020, requiring the claimant to comply with all outstanding case management orders by 24 April 2020. This was of course a very short period but there is on this appeal no challenge to subsequent decisions which turns on the period provided by the unless order.

23. On 24 April 2020, the claimant sent what he acknowledged were incomplete further particulars. There was no impact statement.

24. On 13 May 2020, at a telephone preliminary hearing, EJ Emerton confirmed that the claims had been dismissed for non-compliance with the unless order.

25. On 18 June 2021, EJ Emerton considered the claimant's application to set aside the dismissal of the claims. He considered the application on the papers, the claimant not having asked for a hearing. He set out in significant detail the history of non-compliance with orders. He recorded that the claimant had not provided any medical evidence to explain his persistent non-compliance with case management orders. EJ Emerton set aside the dismissal of the unfair dismissal claim but did not reinstate the other claims. The unfair dismissal claim was listed for a three day full merits hearing on 26, 27 and 28 January 2022. EJ Emerton said:

‘4. The tribunal decided that the claimant should be permitted to pursue his unfair dismissal claim.

5. In essence, the claimant had been dismissed by the respondent after 13 years' service, and he had set out his claim with sufficient clarity that the respondent should be able to call evidence and deal with the matters raised, in a relatively short and simple hearing. This would not need extensive case management. Whilst the claim is not articulated with great clarity, the legally-represented respondent will be accustomed to dealing with such cases, and there is no reason why a fair hearing cannot be achieved. The claimant's defaults in respect of case management orders relating to the unfair dismissal are relatively minor. The main thrust of the orders, to which the unless order relates, was not directed at the unfair dismissal claim, and it is in the interests of justice to permit the claimant to pursue this claim. Had unfair dismissal been the only claim for the tribunal, it could have been listed for final hearing on receipt of the ET3, with standard directions.

6. In respect of the disability discrimination claim, the tribunal considered that the respondent presented an extremely strong argument as to why the order should not be set aside. This is, regrettably, one of those problematical claims often referred to as “kitchen sink” cases by the appellate courts, which has required a very significant investment of time by the respondent and by the tribunal, which, regrettably, never resulted in any significant clarification of the discrimination claims.

7. The claimant had attempted to bring a hugely complicated and entirely unclear claim, and despite repeated attempts by the tribunal to enable the claimant to present an understandable claim, which did not need to be anything other than short and simple, he failed to do so. The claimant had been given many opportunities, and clear case management orders, and the respondent's earlier strike out applications had been refused, to give the claimant a final chance to set out, simply, what the claim was that he wished to bring. The judge went out of his way to enable the claimant to comply, but the claimant simply failed to do so.

8. The Unless Order must be seen in the context of repeated orders, warnings and time extensions, and in fact the Order was issued at a time when extensions of time had already expired, and the claimant had previously made it clear that he would be able to comply within the time he had proposed for the extension. It is of considerable significance that the

claimant's purported, but late and incomplete, compliance with case management orders (after the deadline set out in the Unless Order) still failed to bring any clarity to his claim. The practical effect was that despite huge efforts from the tribunal and the respondent, the case was (by June 2020) no further forward than it had been in March 2019. There is no realistic prospect of making further progress with clarification.'

26. I note that in his application under rule 38(2) dated 27 April 2020, the claimant had said:

'Claimant's disability and any reasonable adjustments required have not yet been understood or accepted by the Tribunal or Respondent. The case is proceeding on claims of undiagnosed disability. Details of reasonable adjustment not yet be known. In particular Tribunal may have initiated 'Unless Order' on grounds of repeated failure of claimant to meet his own assurances of compliance and interpreted wilfulness in that failure. Claimant has been assessed by Psychologist at Dorset HealthCare University NHS Foundation Trust's Community Adult Aspergers Service as likely to have a diagnosis of ASD. Given that the Tribunal has decided to proceed with case before diagnosis is confirmed and an assessment of reasonable adjustment relevant to case made, it would seems reasonable to assume that the diagnosis applies rather than not - otherwise a form of discrimination might apply - and to allow reasonable adjustments that in absence of formal assessment - claimant himself believes reasonable as next best able to say what is needed to engage in the Tribunal process. For someone with ASD and associated 'executive functioning' impairments, the use of deadlines - especially externally set deadlines - are known to be a useful technique to kick start or overcome avoidance associated with sensory overload and underlying anxiety disorder. I gave assurances of compliance the next day as a strategy to help me to overcome my impairment. Distant deadlines don't work. External high risk deadline's work really well and I think the 'Unless Order' was a useful to help facilitate compliance - but not reasonable to use as a punitive measure.'

27. On 14 July 2021, the claimant made an application for reconsideration of EJ Emerton's decision, attaching a letter from Dr Edwards, a clinical psychologist, dated 7 July 2021.

28. In the application:

- The claimant said that he wanted his indirect disability claim to proceed as it was intrinsically linked to his claim for unfair dismissal and striking out the disability discrimination claim might have a negative impact on his unfair dismissal claim;
- There was then a paragraph setting out the effects of his impairments in support of a point that these were interpreted by managers as evidence of poor performance;
- The most material passage for the purposes of this appeal read:

'I have supplied all medical evidence within my possession or control, and now attach a letter from Dr Adrian Edwards, the Psychologist who carried out my recent diagnostic assessment for autism, to further support my request. I asked him to report on my ability to comply with orders since I can become easily overwhelmed and anxious by things I struggle with, such as

numbered paragraphs. He stated that he could not without carrying out a specific assessment for that purpose but would write what he could.

‘Hidden’ disabilities such as Autism are known to be not generally well understood but there is a growing campaign to educate and inform for the benefit of employers and employees. In my case the impairments that have affected my ability to resolve my grievances, defend malicious allegations and comply with case management orders have been misinterpreted and presented as misconduct and wilful non-compliance.

Whilst I acknowledge that ‘Unless Order’ helped me to get started, it unfortunately did not allow me enough time to complete it. And my repeated assurances that I would be able to complete it in time, these were made out of fear that the case could be dismissed if I could not convince you that I could finish, and because all other requests for support to facilitate compliance had been declined: mediation, time to recover and time to secure the support I needed. However, I have now sought professional legal support, and so am in a position whereby I can confidently engage with my obligations regarding this claim. A disability impact statement has now been properly drafted.’

29. In the letter, Dr Edwards said that he had diagnosed the claimant with ‘ASD (Asperger’s syndrome)’. He commented:

‘Mr Grantham is a vulnerable gentleman, whose difficulties make him prone to accompanied heightened levels of anxiety, stress and frustration that, in turn, can significantly impinge upon his executive functioning skills, i.e., planning, processing and organising. He can become quickly overwhelmed and overly occupied by little details. As a consequence of the aforementioned things (amongst other on-going stressors and challenges) Mr Grantham is currently struggling to cope.

Communicating - Mr Grantham is able to communicate verbally, but he struggles with unfamiliar questions and subjects. His speech can then appear to stammer and is often lacking intonation. He is prone to giving too much detail. He tends to answer using complicated terms, going off on wild tangents and speaking in monologues. My impression is that he would struggle to maintain the normal to-and-fro of conversation, and that this would increase risks when accessing the community and/or working. He will need additional time to process information that is given verbally and / or written.

Engaging with other People Face-to-Face Please see point 1 above. Mr Grantham is on the autistic spectrum, and he certainly has difficulty with interacting effectively with others, often leading to significant anxiety and stress. When he does talk to others, he will often replay the conversations over and over in his head in order to try to work out if he has said the right thing, which causes him high levels of anxiety and stress.’

30. Thereafter, despite the assurances in his application of 14 July 2021, there was a continuing failure by the claimant to comply with revised case management orders given for the unfair dismissal claim. By January 2022, there was no bundle and there were no witness statements. On 5 January 2022, the claimant wrote to acknowledge that he was experiencing difficulty complying with case management orders due, he said, to ‘depression and anxiety exacerbated by autistic inertia’. He said this difficulty was resolvable ‘by reasonable adjustments such as mediation and dialogue’. He also asked for some time on compassionate grounds due to the very recent death of his father for whom

he had been the primary carer.

31. The full merits hearing was vacated by the Tribunal and there was a hearing on 26 January 2022 in front of EJ Cadney. This hearing was listed to consider the respondent's application to strike out the unfair dismissal claim. It only emerged at the hearing, at least so far as the respondent and EJ Cadney were concerned, that the claimant had applied to reconsider EJ Emerton's decision and that this application had not yet been heard. The application had not previously been copied to the respondent.

32. After consultation with the REJ, it was agreed that EJ Cadney would deal with both applications and EJ Cadney made directions for written submissions on the reconsideration application.

The judgment appealed

33. In addition to the materials provided to EJ Cadney for the January 2022 hearing, he had in front of him the respondent's written objection to the reconsideration application dated 2 March 2022. Those submissions addressed the claimant's application for reconsideration paragraph by paragraph. It is worth setting out the relevant sections in some detail:

‘Second, third and fourth paragraphs

37. The Respondent understands from these paragraphs that the Claimant is seeking to argue that his mental impairments and/or health conditions made it harder for him to comply with the Tribunal orders.

38. At paragraph 60 of his judgment, EJ Emerton found that “The claimant has not provided any medical evidence to explain his persistent non-compliance with case management orders. In fact, in his own submission, he says that the unless order assisted him in focusing his mind.” [186/P190]

39. The Tribunal is referred also to the Respondent's submissions on the issue of medical evidence at paragraphs 41-51 of its Reply to the rule 38(2) application [129/P133 - 131/P135].

40. The Claimant now seeks to rely on a letter dated 7 July 2021 from Dr Adrian Edwards (Principal Clinical Psychologist) which confirms a diagnosis of Autistic Spectrum Disorder in June 2021. This diagnosis had already been anticipated in the Claimant's original application under rule 38(2), at paragraph 3 [116/P120].

41. Notably, the Claimant confirms in his application for reconsideration that Dr Edwards did not carry out a specific assessment for the purpose of reporting on his ability to comply with orders. The report does however identify that the Claimant can be prone to anxiety, can become overly occupied with little details, and that he will need additional time to process information.

42. However, as EJ Emerton observed at paragraph 52 of his judgment: “What marks this case out is that there had been repeated attempts to assist the claimant in setting out his case, various extensions of time, and numerous “opportunities to bite the cherry”.

Recourse to an Unless Order was only has [sic] after repeated and supportive measures and guidance had failed to spur the claimant on to do what was necessary if his claim was ever to reach a final hearing”. [184/P188]

43. These opportunities to comply are set out in detail at paragraphs 9 to 27 of EJ Emerton’s judgment [178/P182 - 180/P184]. The Claimant has still not fully complied.

Even if his ASD was and/or is the reason for his non-compliance (which is not a conclusion expressly reached by Dr Edwards) it is unclear what reasonable adjustments could still be made to ensure future compliance such that the claim could ever be ready for trial.

44. In this regard, the Respondent’s submissions at paragraphs 36 to 37 of its reply to the rule 38(2) application [128/P132] remain pertinent and bear repeating here in full:

36. [Hylton v Royal Mail Group Limited UKEAT/0369/14] is an authority which assists the Respondent more than the Claimant. The Tribunal is referred in particular to paragraphs 21-22 and 24-27 of the EAT’s judgment...

h. It was for the Claimant in an application for relief from sanction to set before the Tribunal clear (medical) evidence as to why they had not complied thus far, and clear evidence that there was a real chance that they would be fit enough to comply in future;

i. There was no error in not considering a lesser sanction than strike-out in circumstances where the Tribunal had concluded that sufficient clarification of the claim to enable it to proceed could not sensibly be expected.

...

c. Although the Claimant has asserted numerous medical reasons for his inability to comply within the timeframes he himself requested, he has provided no evidence which explains how any medical condition of his caused or contributed to non-compliance of this magnitude, or that could properly satisfy the Tribunal that he would now be capable of compliance with case management orders going forward.

45. The difficulty for the Claimant is that, even if Dr Edwards’ letter could be read as providing some clinical explanation for aspects of his previous non-compliance, it does not explain how this will or can change going forward. As it stands, the indirect discrimination claims (and indeed all the claims) remain unclear and unparticularised more than 3 years after his dismissal.

46. In respect of paragraph 5 of the Claimant’s application letter, it should be noted that EJ Emerton does not suggest that his non-compliance was wilful, nor did it need to be for him to reach the conclusion that he did.’

34. In his judgment with reasons, the EJ summarised the procedural history. He considered first the reconsideration application. He said:

‘On 12th July 2021 the claimant applied for a reconsideration of EJ Emerton’s decision to strike out the claims, and not to set aside the Unless Order of 22nd April 2020. He asserted that the “indirect disability discrimination” claim was inextricably linked to the unfair dismissal claim. He refers to having had a stress induced breakdown in 2014 and to recovery from reaction to severe stress and adjustment disorder during 2019. Although the application only specifically refers to the indirect disability discrimination claim I will assume, as this was certainly how the claimant put it to me orally at the hearing on 26th January 2022 that he was seeking to be permitted to pursue all of his claims including the public interest disclosure detriment and/or automatic unfair dismissal claims. His oral submission was to the effect that the decision to dismiss and the unfair dismissal claim could not be understood or properly assessed unless he is permitted to advance all of his claims.’

35. It is clear from this paragraph that the EJ had read the application which attached Dr Edwards' letter.

36. The EJ then focussed on the issue of whether the disability and unfair dismissal claims were intertwined as the claimant asserted. He did not expressly address what the claimant had said in his application about reasonable adjustments and he did not mention Dr Edwards' letter. He said:

‘In my judgement there is nothing in the application which leads me to the conclusion either that EJ Emerton was wrong or that I would not have reached the same decision; and nothing that leads me to the conclusion that EJ Emerton's original decision should be revoked or varied in relation to the claims that he struck out. ‘

37. The strike out application was presented on three grounds: that the claimant had not complied with the orders given for the three day full merits hearing listed for 26 – 28 January 2022, that there was unreasonable conduct by the claimant throughout the proceedings, and that the case was not being actively pursued by the claimant.

38. Again, there is no reference to Dr Edwards' letter in this part of the reasons but there is some reference to the claimant's impairments at paragraph 20:

‘Between the end of October 2021 and early January 2022 the respondent made a number of applications relating to the provision, of documents compliance with CMOs and finally seeking the postponement of the hearing and the strike out of the claim. On 5th January 2022 the claimant wrote accepting that he "had difficulty complying with case management orders" and states "this is a direct consequence of my disability – depression and anxiety exacerbated by autistic inertia - and easily resolvable by reasonable adjustments such as mediation and dialogue". He repeats that "...my actions were justified and in good faith...". He also set out that his father had died on New Years' Day having been diagnosed with cancer in August and asking for more time to be allowed on compassionate grounds.’

39. EJ Cadney's conclusions on the strike out application were:

‘There are a number of aspects of the litigation that concern me:

- i) This litigation has been proceeding for three years. The discrimination and other claims were struck out nearly two years ago; and the claim for unfair dismissal was listed in July 2021 for hearing in January 2022. Accordingly it should now have been concluded.
- ii) The claimant was granted every opportunity to cogently and concisely set out his claims.

He did not do so and the claims were struck out, with the unfair dismissal claim subsequently restored.

iii) The claimant knew, or should have known from the decision, that EJ Emerton regarded the unfair dismissal claim as a stand-alone claim that was not dependant on any of the others. Whilst the claimant had applied for a reconsideration of that decision he could not assume that that application would be successful, but he neither applied for a variation of the case management orders or made any serious attempt to comply with them.

iv) As a result the trial window had to be vacated as on any analysis the case was not ready for hearing; and is in reality was no further forward than it was when the directions were given.

v) Despite the other claims having been struck out nearly two years ago the claimant continues to focus on them and he has made no attempt at all to restrict his claims;

vi) Given his inability to comply in nearly three years with the existing case management orders at every stage of the proceedings the expectation that the claimant will be able to narrowly focus and abide by any further case management orders is optimistic in the extreme.

27. On one analysis a fair trial is still possible even at this distance in time if the unfair dismissal claim is confined as narrowly as I have at paragraph 8 above and as was clearly anticipated by EJ Emerton. However the claimant is unwilling or unable to focus his claim and still seeks to pursue allegations which are the basis of claims which have already been struck out for his failure adequately particularise them. In addition the claimant's request for "mediation or dialogue" as a reasonable adjustment similarly does not suggest he has grasped the stage the litigation had reached by June 2021, with only the unfair dismissal claim remaining.

28. That gives two possibilities. Firstly the unfair dismissal claim could be re-listed for a further three day hearing and more time given for compliance with the existing directions. Given the history of this case, however, I have no confidence that any future directions would meet with any greater success particularly as the claimant appears not to accept that the order of EJ Emerton requires him to focus exclusively and narrowly on the unfair dismissal claim. More fundamentally the purpose of case management is to allow claims to proceed to hearing within a reasonable timeframe, and to be ready for hearing. There must come a point at which the tribunal concludes that it is simply not fair or reasonable to the respondent to be facing litigation which should and could have been concluded by now. Had the directions been complied with the final hearing would have taken place in January 2022, which is itself nearly three years after the claim was lodged. That it did not is entirely due to the claimant's failure to comply with case management directions. As set out above I am entitled to take into account not simply whether a fair hearing is possible at all at some point in the future, but whether a fair trial is possible in the trial window allocated. In this case self-evidently it was not.

29. It follows that in my view the first threshold test is met in that there has unquestionably been a persistent disregard for case management orders. The second question is whether a strike out is a proportionate. In many circumstances where an unfair dismissal claim had been listed for final hearing which had not proceeded because of the default of one party an immediate strike out would be disproportionate. However, in the exceptional circumstances of this case, in my view the situation is somewhat different. For the reasons given above the claimant has been in persistent default of case management orders at every stage of the litigation. In consequence the case was not ready for the final hearing. I bear in mind that a strike out is draconian sanction which may result in the dismissal of a meritorious claim and should only be used as a last resort and where there is no other proportionate sanction. However, bearing all of that in mind, and whilst I have some degree of sympathy for the claimant he has been given every opportunity to present his claims and has consistently failed to comply with case management orders to allow him to do so and in my judgement in the particular and unusual circumstances of this case is a proportionate order.

30. It follows that the claimant's claim for unfair dismissal is struck out.'

Burns/Barke procedure

40. On 30 July 2026, Judge Jones KC made a **Burns/Barke** order for EJ Cadney to be asked about whether he had regard to Dr Edwards' letter and to what extent its contents were factored into his decision-making.

41. The EJ replied on 19 August 2026 as follows:

‘EJ Cadney has no specific recollection at this distance in time whether the letter from Dr. Edwards, dated 7th July 2021 was before him or not, and/or whether if it was before him in the sense that it formed part of any bundle whether either party referred to it or sought to rely on it.

He is informed by the administrative staff that any physical bundles would have been destroyed some eighteen months after the hearing. However, the bundle for the PH is still on the electronic file and does not contain the letter from Dr Edwards (If it assists the parties in locating it, it was sent at 16.03 on 24th January 2022 by the respondent's solicitor together with respondent's Skeleton Argument and authorities.)

Unless either party supplied a supplemental physical bundle with further documents which contained the letter, on the basis of the electronic bundle, it was not before the EJ, and on the face of it he cannot have taken it into account.’

42. It appears from a reading of EJ Cadney's judgment and the respondent's submissions, that EJ Cadney is probably wrong about whether he had seen Dr Edwards' letter. He had the claimant's application and the respondent's submissions, which both made reference to Dr Edwards' letter. It is highly unlikely he did not also see the letter.

Legal Framework

43. This appeal engages several areas of Employment Tribunal procedure.

Unless orders and setting aside their consequences

44. The relevant provision is what was then rule 38 of the 2013 Employment Tribunals Rules of Procedure:

‘38.—(1) An order may specify that if it is not complied with by the date specified the claim or response, or part of it, shall be dismissed without further order. If a claim or response, or part of it, is dismissed on this basis the Tribunal shall give written notice to the parties confirming what has occurred.

(2) A party whose claim or response has been dismissed, in whole or in part, as a result of such an order may apply to the Tribunal in writing, within 14 days of the date that the notice was sent, to have the order set aside on the basis that it is in the interests of justice to do so. Unless the application includes a request for a hearing, the Tribunal may determine it on the basis of written representations.

(3) Where a response is dismissed under this rule, the effect shall be as if no response had been presented, as set out in rule 21.

45. The approach to an application under rule 38(2) is most conveniently set out in the judgment of Underhill J (as he then was) in **Thind v Salvesen Logistics Limited** [2010] UKEAT 0487:

‘14. ... The tribunal must decide whether it is right, in the interests of justice and the overriding objective, to grant relief to the party in default notwithstanding the breach of the unless order. That involves a broad assessment of what is in the interests of justice, and the factors which may be material to that assessment will vary considerably according to the circumstances of the case and cannot be neatly categorised. They will generally include, but may not be limited to the reason for the default, and in particular, whether it is deliberate; the seriousness of the default; the prejudice to the other party; and whether a fair trial remains possible. The fact that an unless order has been made, which of course put the party in question squarely on notice of the importance of complying with the order and the consequences if he does not do so, will always be an important consideration. Unless orders are an important part of the tribunal’s procedural armoury (albeit not one to be used lightly), and they must be taken very seriously; their effectiveness will be undermined if tribunals are too ready to set them aside. But that is nevertheless no more than one consideration. No one factor is necessarily determinative of the course which the Tribunal should take. Each case will depend on its own facts.’

Strike out

46. The power to strike out was contained in what was then rule 37 of the 2013 Employment Tribunal Rules of Procedure:

‘37.—(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—

- (a) that it is scandalous or vexatious or has no reasonable prospect of success;
- (b) 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;
- (c) for non-compliance with any of these Rules or with an order of the Tribunal;
- (d) that it has not been actively pursued;
- (e) 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).’

47. The approach to be taken by a tribunal on applications for strike out is set out clearly in a string of authorities. Under each of sub paragraphs (b) – d), it will usually have to be shown that a fair trial is no longer possible and the tribunal will have to consider whether strike out is proportionate.

In **Weir Valves and Controls (UK) Ltd v Armitage** [2004] ICR 371, HHJ Richardson said about equivalent strike out provisions in the 2001 Rules:

‘12. An appeal lies against an employment tribunal's decision only on a question of law. An interlocutory decision will only be challengeable where the employment tribunal exercised its discretion under a mistake of law or in disregard of principle or under a misapprehension as to the facts, where it took into account irrelevant matters, failed to take into account relevant matters or where the conclusion was outside the generous ambit within which reasonable disagreement is possible. If such a mistake of law is made, the employment tribunal's discretionary decision will be set aside. If the matter is plain enough on the material before the Employment Appeal Tribunal, the appeal tribunal itself may exercise the discretion that would otherwise have fallen for exercise by the tribunal below. Otherwise, it must remit the matter for further or fresh consideration by the employment tribunal.

13. What are the principles on which the employment tribunal should act in deciding whether to strike out in a case such as this, where there has been a breach of a direction?

14. Where the unreasonable conduct which the employment tribunal is considering involves no breach of a court order, the crucial and decisive question will generally be whether a fair trial of the issues is still possible: *De Keyser Ltd v Wilson* [2001] IRLR 324 , 328–329, paras 24 and 25, applying *Logicrose Ltd v Southend United Football Club Ltd* *The Times*, 5 March 1988 and *Arrow Nominees Inc v Blackledge* [2000] 2 BCLC 167. *De Keyser Ltd v Wilson* was recently followed and applied in *Bolch v Chipman*, para 55 (unreported) 19 May 2003 [see [2003] ICR Part 12, Recent Points].

15. Even if a fair trial as a whole is not possible, the question of remedy must still be considered so as to ensure that the effect of a debarral order does not exceed what is proportionate: see *Bolch v Chipman*, para 55(3) and (4). For example, it may still be entirely just to allow a defaulting party to take some part in a question of compensation which he is liable to pay.

16. Those principles apply where there is no disobedience to an order. What if there is a court order and there has been disobedience to it? This is an additional consideration. The principles which we have set out above do not apply in the same way. The tribunal must be able to impose a sanction where there has been wilful disobedience to an order: see *De Keyser Ltd v Wilson* [2001] IRLR 324 , 329, para 25 and *Bolch v Chipman* , para 55(2).

17. But it does not follow that a striking-out order or other sanction should always be the result of disobedience to an order. The guiding consideration is the overriding objective. This requires justice to be done between the parties. The court should consider all the circumstances. It should consider the magnitude of the default, whether the default is the responsibility of the solicitor or the party, what disruption, unfairness or prejudice has been caused and, still, whether a fair hearing is still possible. It should consider whether striking out or some lesser remedy would be an appropriate response to the disobedience.’

48. In **Emuemukoro v Croma Vigilant (Scotland) Ltd** [2021] UKEAT 2020-6, [2022] ICR 327,

Choudhury J (then president of the EAT) said:

‘...Where an application to strike-out is considered on the first day of trial, it is clearly a highly relevant consideration as to whether a fair trial is possible within that trial window. In my judgment, where a party's unreasonable conduct has resulted in a fair trial not being possible

within that window, the power to strike-out is triggered. Whether or not the power ought to be exercised would depend on whether or not it is proportionate to do so.

19. I do not accept Mr Kohanzad's proposition that the power can only be triggered where a fair trial is rendered impossible in an absolute sense. That approach would not take account of all the factors that are relevant to a fair trial which the Court of Appeal in *Arrow Nominees* set out. These include, as I have already mentioned, the undue expenditure of time and money; the demands of other litigants; and the finite resources of the court. These are factors which are consistent with taking into account the overriding objective. If Mr Kohanzad's proposition were correct, then these considerations would all be subordinated to the feasibility of conducting a trial whilst the memories of witnesses remain sufficiently intact to deal with the issues. In my judgment, the question of fairness in this context is not confined to that issue alone, albeit that it is an important one to take into account. It would almost always be possible to have a trial of the issues if enough time and resources are thrown at it and if scant regard were paid to the consequences of delay and costs for the other parties. However, it would clearly be inconsistent with the notion of fairness generally, and the overriding objective, if the fairness question had to be considered without regard to such matters.'

Reconsideration

49. The power to reconsider judgments is provided for in rule 70 of the 2013 Rules:

'70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again'.

Reasonable adjustments

50. There is a developing body of authorities on the question of what accommodations should be made by tribunals for disabled people who appear before them and the relationship between those adjustments and other decisions. These are not statutory 'reasonable adjustments' provided pursuant to a duty under the Equality Act 2010, although they are often given that label; they arise as part of the common law duty of fairness: **Heal v University of Oxford** [2020] ICR 1294.

51. In **Bryce v Trident Group Security Limited** [2022] EWCA EAT 137, the claimant appealed a refusal to grant an application for relief from sanction, the claimant's claims having been dismissed for breach of an unless order. The claimant was disabled due to Asperger's and dyslexia and the claim had what was described as a tortuous procedural history. Judge Mansfield KC (Deputy Judge of the High Court, as he then was) considered how the Tribunal should have factored in to the exercise it was conducting a consideration of the claimant's disability and the adjustments the claimant required.

I quote the judgment at some length for its analysis of the different parts of a judge's decision making process where disability may play a role:

‘47. It appears clear from the cases to which Mr Jones has taken me that, although the tribunal has a broad discretion to consider the interests of justice in making a decision under Rule 38(2), that has to be read alongside the duty of the tribunal to consider reasonable adjustments in the case of a disabled person. The cases to which Mr Jones referred me on reasonable adjustments for litigants in the tribunal deal with decisions as to the conduct of hearings; but, it appears to me that the same broad principles apply to the taking of case management steps. It is all part of the general consideration of fairness to disabled litigants in being able to participate in their claims.

...

55. I do not suggest for a moment that any employment tribunal is obliged to take at face value what a claimant or any party says about their disability, its impact or its causative relationship with any default in a particular case. An employment judge is entitled to evaluate the evidence in front of him/her. In this case, the disability potentially had an impact on a number of factors and, in my judgment, four in particular:

- a. First, the question as to the failure to comply with EJ Self's unless order. The Claimant said that he had not had enough time to comply with it, but said so in the context of the points that he had already made about his disability;
- b. Second, EJ Self's unless order had been granted because of the failure to attend the hearing on 13th December. The 31st December e-mail advanced an explanation (in part, at least) that was caused by the misreading of dates; that, in itself, was said to be an effect of the Claimant's disability;
- c. Third, EJ Findlay, had regard to the Claimant's earlier failure to comply with the first unless order. EJ Findlay's reasoning being that the default on the second unless order was not the Claimant's first failure to comply with an order. To the extent that the earlier failure to comply was a relevant consideration affecting the balance of the interests of justice, it was relevant to consider the impact of disability on that earlier failure. In respect of the first unless order, the Claimant had applied promptly for an extension of time and had said that he did not understand the order;
- d. Fourth, finally and perhaps most significantly, when the Tribunal considered the Claimant's application for relief from sanction, it may be relevant to consider the Claimant's disability in deciding whether adjustments were necessary in determining the application; and to consider whether it was necessary to take into account the Claimant's difficulty in communicating and expressing himself. It is necessary to consider whether the Claimant had been given a full and proper opportunity to give an explanation.

55. EJ Findlay, in the Reconsideration Decision of October 2020, indicated that she did take into account that the Claimant's disability, but noted that it had not previously prevented the Claimant from responding to Tribunal orders on the day that they were sent out. It seems to me that reasoning may not properly appreciate, without further consideration, the impact of the Claimant's disability. It might be said the fact that one can do things sometimes in accordance with deadlines doesn't mean that one is always able to do so. It may not negate the argument that a mistake had been made on a particular occasion, particularly as to timescales.

56. In many respects, EJ Findlay's reasons reflect a careful consideration of the various factors. Absent the question of the Claimant's disability, I doubt very much that EJ Findlay's decision would have been open to attack on appeal, but the crucial problem is that EJ Findlay's reasons do not expressly consider the need to make adjustments for the Claimant's disability at all. There is no reference to the authorities to which I have been referred nor to the Equal Treatment Bench Book. There appears to have been no express consideration, when evaluating the application for relief from sanction, of whether any adjustments were necessary to make sure that the Claimant had been able to advance his case. Indeed, there is force in the point

that there had never been any consideration throughout the history of the proceedings of any need for adjustments to be made for the Claimant to be able to advance his case.

57. In the context in which the evidence before the Employment Tribunal was that the Claimant was disabled in a way that affected communication, memory and his ability to read and understand dates and times, in my judgment, that was an error of approach. **The Tribunal ought properly, before fully considering the interests of justice on the Rule 38(2) application, to have considered what (if any) adjustments were necessary, both in determining the application and in evaluating the various factors that I have outlined that were relevant to the application.'**

[Emphasis added]

52. Also relevant in the context both of relief from unless order sanctions and reasonable adjustments is **Hylton v Royal Mail Group** [2015] UKEAT 0369, a judgment of Langstaff J, then president of the EAT. Although this decision predates by some months Langstaff J's judgment in **Rackham v NHS Professionals** [2015] UKEAT 0110, in which the EAT articulated the duty on tribunals to make adjustments for disabled people, in my judgement, there is nothing in the approach in **Hylton** which is inconsistent with that duty.

53. Ms Hylton was in breach of an unless order to provide particulars of her claims. She had repeatedly been unable to attend hearings due to panic attacks. The respondent in the present appeal relied on the approach outlined by Langstaff J:

'24. As to the assertion that the Claimant's behaviour was not deliberate, the Judge did not say in terms that it was. But nor did he say that it was not. He noted in the body of his Decision that the medical evidence did not include any medical evidence to support her assertion that the medication she was taking affected her ability to comply with the order made on 25 February (see paragraph 19) except for the one sentence in the letter from Dr Uduku to which I have already referred. In his conclusions he did not rely particularly upon those save to say (paragraph 24, second paragraph) that the medical evidence presented was unsatisfactory. That was in the context not of explaining the absence of the particulars, though I think a fair reading of the Judgment suggests the Judge thought little of it, and it had been pointed out to him by Mr Peacock for the Respondent that the Claimant had been able to adhere to other directions, that -8- UKEAT/0369/14/DA there was no obvious explanation why she should be fit to be at work between 10 and 24 February, and still failed to comply, and that the letter which she wrote on 27 February was a model of fluency, coherence and it was constructive. He was concerned more with whether or not a Preliminary Hearing might not take place. This being an application for relief from sanction, it was for the Claimant to satisfy him of that which it was necessary to show that it was the interests of justice that her claim proceed. **The reference to Riley and the suggestion that the Tribunal itself should have written to the doctor misses the point that, in an application such as this, it was really for the Claimant to set before the Tribunal clear evidence as to why she had not complied thus far and clear evidence that there was a real chance that she would be fit enough to attend the hearing and would not, because of the understandable effects of her condition, suffer panic attacks as the hearing became immediately imminent.'**

[Emphasis added]

54. In terms of the disposal of this appeal, I bear in mind the decision of Laws LJ in **Jafri v Lincoln College** [2014] EWCA Civ 449, [2015] QB 781:

‘21. I must confess with great respect to some difficulty with the “plainly and unarguably right” test elaborated in Dobie. It is not the task of the EAT to decide what result is “right” on the merits. That decision is for the ET, the industrial jury. The EAT’s function is (and is only) to see that the ET’s decisions are lawfully made. If therefore the EAT detects a legal error by the ET, it must send the case back unless (a) it concludes that the error cannot have affected the result, for in that case the error will have been immaterial and the result as lawful as if it had not been made; or (b) without the error the result would have been different, but the EAT is able to conclude what it must have been. In neither case is the EAT to make any factual assessment for itself, nor make any judgment of its own as to the merits of the case; the result must flow from findings made by the ET, supplemented (if at all) only by undisputed or indisputable facts. Otherwise, there must be a remittal.

Grounds of appeal and claimant’s arguments

55. Although there were two grounds of appeal which were given permission, they both turned on whether the EJ had taken into account Dr Edwards’ letter appropriately or at all when making the two decisions he had to make, in particular in considering what effect the claimant’s impairments would have had on his ability to comply with case management orders and what reasonable adjustments he might require to enable him to comply with such orders.

56. In his skeleton, the claimant very fairly accepted that his impairments did not excuse all of his defaults, that the history of non-compliance with orders was serious, that there was delay and real prejudice to the respondent, and that EJ Cadney had given consideration to the alternative of not striking out and allowing the claimant more time to comply with directions. EJ Cadney had undertaken the structured approach to strike out required by the authorities. The issue was whether EJ Cadney had given proper consideration to the letter from Dr Edwards.

57. What the claimant said was that the conclusion on whether the claimant was unwilling or unable to focus, so that no future directions could succeed, was a decision which should only have been reached after proper consideration of Dr Edwards’ letter and what it indicated about case

management options. EJ Cadney's judgment made no reference to the letter.

58. So far as the decision to strike out the unfair dismissal claim is concerned, the claimant said that that the EJ omitted consideration of a matter necessary to the exercise of his discretion. Proper consideration of Dr Edwards' letter could have led to case management orders which would have enabled a fair hearing to take place. The EJ only considered relisting and providing more time for directions but could have considered what the claimant described in his skeleton as 'fixed judge-led questions, a prescribed one- or two- page outline, sequential directions, a controlled document schedule and a final conditional order.'

59. I asked the claimant during his submissions what he meant by these suggestions, which were not altogether clear to me, and what directions he thought would have helped. He said that deadlines had proved effective. It appeared that by that he meant the unless order. He said that he would have been assisted by understanding what was not clear about his claims, that more feedback would have helped, deadlines in smaller chunks and some kind of template document. Ultimately he suggested that an iterative process to determine the issues would have helped.

60. The claimant said that EJ Emerton had identified a relatively straight-forward unfair dismissal claim. With appropriate adjustments based on Dr Edwards' letter, a fair trial was still possible and strike out was disproportionate.

61. So far as the reconsideration application was concerned, the claimant accepted that the other claims remained unclear. The letter was new evidence postdating EJ Emerton's decision which was capable of influencing the issue of whether the interests of justice required a 'short, highly structured final clarification process before confirming dismissal'.

Respondent's arguments

62. It was not of itself an error of law for the EJ not to refer to Dr Edwards' letter.

Reconsideration

63. EJ Cadney had borne in mind EJ Emerton's reasons for refusing the rule 38(2) application, which included EJ Emerton's conclusion that the claimant had not provided medical evidence to explain his non-compliance with case management orders. He had also taken into account the fact that the claimant had been given many extensions of time. Although these extensions were not formally labelled as reasonable adjustments, the claimant had repeatedly been given the benefit of the doubt. EJ Cadney said that there was nothing in the reconsideration application which demonstrated that EJ Emerton was wrong. He must have been aware of the content of Dr Edwards' letter, given the references in the application and the respondent's submissions, but he concluded that it was not in the interests of justice to reconsider; the letter did not add anything substantive to the material which had been in front of EJ Emerton.

64. **Hylton** made it clear that it was incumbent on the claimant to adduce clear evidence to show why he had not complied with directions and that there was a real chance of compliance in future. The Dr Edwards letter gave no basis for concluding that ASC was the cause of the persistent non-compliance or that there were adjustments which would enable compliance going forward. It neither did nor would have made any difference to the decision. It gave no reason to hope that the claims would be clarified.

Strike out

65. There was no failure to take into account a relevant factor. The EJ had referred to the claimant's impairment and reasonable adjustments. Dr Edwards' letter did not suggest that there were adjustments which had not yet been tried which would enable a fair trial to take place in a reasonable time.

66. The central reason for strike out was the claimant's insistence that the disability and unfair dismissal claims were inextricably linked and the EJ was entitled to conclude that a fair trial was not possible, given that insistence and its impact on case management.

Discussion and conclusions

67. EJ Cadney not only did not refer expressly to Dr Edwards' letter, he did not deal with how that evidence or medical evidence more generally might be relevant to the discretions he was exercising. Taking the approach in Bryce, in respect of the reconsideration application, medical evidence was relevant to the questions of whether the defaults were caused by the claimant's impairments and whether there were adjustments which could have made a difference. On the strike out issue, EJ Cadney has not addressed, as part of the proportionality assessment, whether adjustments could secure compliance with case management orders so as to make a fair trial possible. He has not expressly considered the part played by disability in the claimant's non-compliance.

68. In my judgment, those were both errors in the exercise of the relevant discretions. The EJ should have considered whether and to what extent the medical evidence in fact addressed those issues and weighed it with other factors when making his decisions.

69. What would have happened if the EJ had turned his mind to Dr Edwards' letter?

70. The letter explained that the claimant's impairments affected his planning, processing and organising ability and his ability to communicate. He struggled in various ways with conversation and would need additional time to process information given orally or in writing. That account of the effects of the claimant's condition would certainly to some extent have accounted for delays by the claimant but it was very far from providing a complete explanation of the extensive and persistent defaults by the claimant and his failure over a long period of time even to articulate his claims.

71. The only adjustment to case management orders reasonably to be extracted from this account was provision of more time. The claimant had had a great deal more time. The claims were still insufficiently defined and the claimant was still unable to comply with directions. I note that by the time EJ Cadney was considering the matter, Dr Edwards' letter was many months old. Despite the reference in the application of 14 July 2021 to the possibility of obtaining more detailed advice about adjustments, the claimant had apparently not sought further medical input on the issue. The letter did not provide any kind of roadmap for the proceedings or even a basis for hope of there being adjustments which would enable the unfair dismissal claim to proceed to a hearing within a fair timescale. The claimant himself was proffering 'mediation or dialogue' as the adjustments he required. It is entirely understandable that the claimant would hope to resolve matters outside of the formal proceedings, but this was not of course an approach the Tribunal could force on the respondent as an 'adjustment'.

72. The claimant did not set out for the EJ as a possible adjustment what he described to me as an iterative process to determine the issues and this suggestion could not be said to be explicit or implicit in Dr Edwards' letter. Even if it had emerged, I cannot see that the EJ would have concluded anything other than that there had in effect been an iterative process which had not enabled the issues to be clarified over a prolonged period of time.

73. Although the claimant said that a fair trial was still possible of the defined unfair dismissal claim which EJ Emerton had restored, in my conclusion the EJ was entitled to find that the claimant's continued focus on other issues was preventing that claim progressing towards a fair trial. That conclusion was not affected by the content of Dr Edwards' letter.

74. So far as the reconsideration issue is concerned, the medical evidence neither sufficiently accounted for the past failure to comply, given the additional time the claimant had already had, nor

did it give hope for future compliance, given the absence of advice about adjustments which had not already been tried. Adapting what Langstaff J said in **Hylton**, it was for the claimant to produce the medical evidence to support a case that past defaults were caused by his impairments and that reasonable adjustments would enable a fair hearing to take place. Dr Edwards' letter could not have made a material difference to EJ Cadney's conclusions that he could have no confidence that any further directions would enable a fair trial to take place, given the procedural history. As Choudhury J made clear in **Emuemokoro**, fairness to both parties cannot require unlimited time and resources to be expended. The fact that a party is disabled may of course require *more* time and more resources to be expended than would otherwise be the case but adjustments must be reasonable and reasonableness ultimately creates a limit on how *much* extra time and resource can fairly be provided.

75. So although the EJ failed to take account of matters which were relevant to the exercise of his discretions, in my judgment his errors did not and could not affect the result. The decisions to strike out the unfair dismissal claim and not to reconsider EJ Emerton's refusal to grant relief from sanctions in respect of the other claims are therefore upheld and the appeal is dismissed.