



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000969/2026

Open Preliminary Hearing (OPH) by CVP on 7 August 2026

Employment Judge: A Strain (sitting alone)

Mr F Entezami

**Claimant
Represented by:
Self**

Clarus Networks Limited

**Respondent
Represented by:
Mr S Gilmour –
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is:

1. the application to amend the claim by removing the pre-employment misrepresentation claim and reducing the sum claimed to £10,000 is granted; and
2. the application for strike out in respect of the claimant's claims is granted except for the claimant's claim in respect of breach of contract for non payment of pension contributions which shall be allowed to proceed to final determination.

Background

1. This was an Open Preliminary Hearing (**OPH**) to consider (1) the respondent's application for strike out of the claimant's claims, in terms of Rule 38(1)(a) of the Employment Tribunal Procedure Rules 2024, on the basis that they have no reasonable prospect of success; (2) the respondent's application for a deposit order on the basis that the claims had little reasonable prospects of success and (3) the claimant's application to amend his claim by removing the claim for pre-employment misrepresentation.

2. The respondent lodged a skeletal argument, List of Authorities and PH Bundle in advance of the OPH (pages 1-77).
3. The claimant represented himself and Mr Gilmour represented the respondents.

Amendment

4. The claimant lodged an application in advance of the OPH to amend the claims by removing his claim of pre-employment misrepresentation and reducing the sum he claimed in respect of his claims to £10,000.
5. The respondent did not object to the amendment.
6. In the circumstances the tribunal granted the claimant's application to amend.

Application for strike out/deposit order

7. The claimant asserted 4 breach of contract claims as follows:
 - a. The respondent failed to enrol him into the pension scheme and failed to make pension contributions from the date of commencement of his employment (14/10/24) to 1/1/25. This caused the claimant to suffer loss in the form of loss of pension contributions/accrual and financial detriment.
 - b. The respondent failed to provide the claimant and his wife with health insurance for the first 3 months of his employment.
 - c. The respondent failed to comply with their contractual appeal procedure by denying him an appeal hearing.
 - d. The respondent terminated the claimant's access to IT systems before completion of the appeal process.
8. The respondent contended that all of the claims were misconceived as a matter of law and disclosed no quantifiable loss. The claims should be struck out as having no reasonable prospect of success which failing little reasonable prospects and a deposit order should be granted.

Submissions

9. The OPH proceeded on the submissions of the parties which were as follows:

Respondent

a and b Pension and Health Insurance

10. Mr Gilmour submitted that the claimant was expressly informed on 14 February 2025 that he would not be entitled to these benefits until completion of his 3 month probationary period. In support of this he referred to an email from one of the claimant's colleagues (David Turner) dated 14 February 2025 (Page 71) to the claimant in response to a query on his entitlements which stated *"Pension and Medical benefits commence after the probation period is finished. This was also the case for me, and I have experienced this in other companies I have worked for in the past."*
11. In any event, the claimant took no action, raised no grievance, and initiated no proceedings regarding this position at any point during his continuing employment. He continued to work and accept salary without protest until bringing this claim on 27 April 2026, over 14 months later and only after his dismissal for redundancy. As such the claimant had waived any alleged breach and affirmed the contract.

Health Insurance

12. Mr Gilmour also submitted that the claim for Health Insurance suffered from 2 further fatal defects. (1) The claimant's contract of employment (Pages 56-63) did not specify a commencement date for entitlement to health insurance and (2) There was no quantifiable loss as the claimant had not at any time during the initial three-month period of his employment: (a) sought to make a medical claim under the policy; (b) incur out-of-pocket expenses for private medical treatment; or (c) purchase alternative or replacement health insurance cover. He suffered no financial loss whatsoever arising from the absence of cover during his probation. Furthermore, insurance cover cannot be purchased retrospectively for a past period where no insured event occurred. Any award of the monetary value of premiums for a historic period would represent a windfall, not compensatory damages.

c. Contractual appeal procedure.

13. Mr Gilmour submitted that the claimant had abandoned the appeal process. He asserted that "factual reality" contradicted the claimant's assertion that he was denied an appeal hearing. He then addressed the "facts".

14. Following his dismissal on 4 February 2026, the claimant submitted an appeal on 11 February 2026.
15. On 26 February 2026, the claimant was offered an appeal meeting to take place either that same day or on 6 March 2026 (Page 75). By his reply on 26 February 2026, he rejected those offers, asserting that the respondent had taken too long to offer a hearing, stating that the matter was now with ACAS, and indicating that he only remained open to resolving the matter through ACAS conciliation or formally via the Tribunal (Page 76). The respondent accepted the C's position (Page 77). As such, the respondent did not fail or refuse to provide an appeal hearing.
16. In any event, Mr Gilmour submitted that even if the claimant had not abandoned his appeal (which was denied), his claim for damages regarding the manner of termination, loss of opportunity of reinstatement, and "*unfair dismissal-like*" compensation was barred as a matter of law.
17. He described this claim as falling within "*the established doctrine of the Johnson exclusion zone*" under reference to the cases of **Johnson v Unisys Ltd [2001] UKHL 13** and **Addis v Gramophone Co Ltd [1909] AC 488**. He considered that these cases were authority for the proposition that an employee cannot recover common law damages for the manner of dismissal, injury to feelings, or loss arising from dismissal beyond the contractual notice period. The implied term of trust and confidence does not apply to the manner in which the employment relationship is terminated.
18. He further relied upon **Edwards v Chesterfield Royal Hospital NHS Foundation Trust [2011] UKSC 58** and submitted that the Supreme Court confirmed that the *Johnson Exclusion Zone* extends to claims for breach of express contractual disciplinary or appeal procedures relating to dismissal. Parliament linked disciplinary and dismissal procedures to the statutory Unfair Dismissal regime; the inclusion of such procedures in a contract does not give rise to a common law action in damages that would circumvent the statutory restrictions and qualifying periods barring access to the Unfair Dismissal regime.
19. As such, Mr Gilmour submitted, a claim based on the denial of a contractual right to a post-dismissal appeal hearing fell squarely within the **Edwards** prohibition. The failure to provide an appeal is part of the dismissal process and does not constitute conduct that precedes and is independent of the dismissal. Where the only loss claimed arises from

the dismissal itself, the claim is limited strictly to contractual notice entitlements (**Anthony v Dyson Ltd [2019] UKEAT/0080/19**).

20. In so far as the claim appeared to be premised on a loss of the opportunity of being reinstated or re-employed following a successful appeal. This was "*legally unsustainable*" under reference to **Janciuk v Winerite Ltd [1998] IRLR 63** and **Harper v Virgin Net Ltd [2004] EWCA Civ 271**.

21. *d. Access to IT systems*

22. Mr Gilmour submitted that the claimant's access to IT systems had been appropriately removed following termination of the claimant's employment.

Claimant

a. Pension

23. The claimant submitted that he had an express contractual entitlement to pension contributions from commencement of his employment.
24. His offer of Employment (which was not produced) stated: "*The company will auto-enrol you into a pension scheme provided by Nest, in accordance with the Company's pension auto-enrolment obligations.*" Clause 12 of his Contract of Employment provided: "*The Company will comply with the employer pension duties applicable to your employment under Part 1 of the Pensions Act 2008.*"
25. He denied that he had waived any breach and affirmed the contract as asserted by Mr Gilmour. The email from his colleague on 14 February 2025 did not alter his contractual entitlement.

b. Health Insurance

26. The claimant's Offer of Employment expressly stated: "*Your annual salary will be £85,000 plus private healthcare.*" No restriction was stated in the offer letter indicating that private healthcare would only commence after probation. Furthermore, Clause 11 of his Contract of Employment states: "*You are entitled to the benefit of the Company's Medical Insurance Scheme.*" The wording "*you are entitled*" created a contractual entitlement.

27. In response to questions from the Employment Judge the claimant advised that he had not incurred any loss in respect of the failure to provide health insurance rather it was the loss of the opportunity for himself and his wife to have used this.

c. Contractual appeal procedure.

28. The claimant had a contractual right of appeal as detailed in Clause 24 of his contract of employment.
29. He disputed the respondent's characterisation of events. He submitted his appeal on 11 February 2026. On 15 February 2026 the Managing Director confirmed that he would provide dates and times for the appeal meeting. No dates were provided within the timescale promised. Subsequently, on 26 February 2026 (Page 77), after ACAS Early Conciliation had commenced, the respondent stated: *"In light of this, and in order to avoid duplication of process, it is appropriate that any further discussions regarding your appeal or the termination of your employment are now addressed through the ACAS Early Conciliation process."* The respondent therefore chose not to continue the appeal process and instead redirected the matter to ACAS. The claimant did not withdraw his appeal.

d. Access to IT systems

30. The removal of access to IT systems was a breach of his contract of employment for which he was entitled to damages.

The Relevant Law

Strike out

31. The EAT in the case of **Cox v Adecco and Others 2021 ICR 1307** provide guidance and endorse the approach of Choudhury J, on the state of the law on strike out in the case of party litigants in **Malik v Birmingham City Council UKEAT/0027/19**.
32. The Equal Treatment Bench Book (Chapter 1) gives context to the approach to be taken in in the case of party litigants.
33. The following general propositions are gleaned from these cases:
- (1) No-one gains by truly hopeless cases being pursued to a hearing;

(2) Strike out is not prohibited in discrimination or whistleblowing cases; but especial care must be taken in such cases as it is very rarely appropriate;

(3) If the question of whether a claim has reasonable prospect of success turns on factual issues that are disputed, it is highly unlikely that strike out will be appropriate;

(4) The claimant's case must ordinarily be taken at its highest;

(5) It is necessary to consider, in reasonable detail, what the claims and issues are. Put bluntly, you can't decide whether a claim has reasonable prospects of success if you don't know what it is;

(6) This does not necessarily require the agreement of a formal list of issues, although that may assist greatly, but does require a fair assessment of the claims and issues on the basis of the pleadings and any other documents in which the claimant seeks to set out the claim;

(7) In the case of a litigant in person, the claim should not be ascertained only by requiring the claimant to explain it while under the stresses of a hearing; reasonable care must be taken to read the pleadings (including additional information) and any key documents in which the claimant sets out the case. When pushed by a judge to explain the claim, a litigant in person may become like a rabbit in the headlights and fail to explain the case they have set out in writing;

(8) Respondents, particularly if legally represented, in accordance with their duties to assist the tribunal to comply with the overriding objective and not to take procedural advantage of litigants in person, should assist the tribunal to identify the documents in which the claim is set out, even if it may not be explicitly pleaded in a manner that would be expected of a lawyer; (9) If the claim would have reasonable prospects of success had it been properly pleaded, consideration should be given to the possibility of an amendment, subject to the usual test of balancing the justice of permitting or refusing the amendment, taking account of the relevant circumstances.

34. Where material facts are in dispute which could only be determined by an evidential hearing the claim should not be struck out – **Kaur v Leeds Teaching Hospitals NHS Trust 2019 ICR 1.**

Discussion and Decision

35. The tribunal considered the application for strike out/deposit in respect of each of the claims.

a. Pension

36. There were clear factual disputes between the claimant and the respondent with regard to this claim.
37. The claimant's contract of employment at Clause 12 and his offer letter (which was not produced) refer to the respondent auto enrolling the claimant into their pension scheme and complying with their statutory obligations. There is no reference to when auto enrolment will be done. On the face of it there is an arguable case that the claimant was entitled to auto enrolment from commencement of his employment which will require the hearing of evidence and the determination of the matter by the tribunal.
38. The claimant disputed any waiver of breach of contract in this regard and any affirmation of the contract. These were matters which Mr Gilmour conceded during his submissions would need evidence to be heard in order to be determined.
39. In light of this concession and the clear factual disputes between the parties the tribunal could not say the claim had no reasonable prospect of success nor could it say that the claim had little reasonable prospect of success.
40. The application for strike out/deposit order is refused.

b. Health Insurance

41. Whilst there was a clear factual dispute as to when the entitlement to health insurance commenced the significant factor here was that the claimant had suffered no loss.
42. The tribunal considered that there was merit in Mr Gilmour's submission that there was no quantifiable recoverable loss. The claimant had not incurred any costs nor had he purchased alternative health insurance for the period this cover was not available. His loss was a loss of opportunity.
43. This claim has no recoverable financial value even if the claimant establishes health insurance was a contractual entitlement from the commencement of his employment and that he had not waived any breach and affirmed the contract.
44. Accordingly the claim has no reasonable prospect of success and is struck out.

c. Contractual appeal procedure.

45. Even if the claimant established that there was a contractual right of appeal and he had not abandoned his appeal the tribunal agreed with Mr Gilmour's

submission that his claim for damages is excluded under reference to the cases of **Edwards** and **Johnson**.

46. The failure to provide an appeal is part of the dismissal process and excluded.
47. Accordingly the claim has no reasonable prospect of success and is struck out.

d. Access to IT systems

48. The removal of the claimant's access to IT systems was done after termination of his employment. The tribunal could see no basis for suggesting there was any express or implied entitlement to access after termination of employment. Even if there had been the tribunal did not consider any recoverable loss could have been sustained by the claimant in respect of any such breach.
49. The claim has no reasonable prospect of success and is struck out.

Date sent to parties

09 September 2026