



EMPLOYMENT TRIBUNALS

Heard at: London South (by video)

On: 7 October 2026

Claimant: Mr Franklin Addo

Respondent: Jocelyn Cares Domiciliary Limited

Before: Employment Judge Sellwood

Representation:

Claimants Mr Addo, in person

Respondent Ms White, Litigation Consultant

JUDGMENT

1. The Respondent's application for an extension of time to file its ET3 is granted.
2. The Respondent's application to strike out the claims pursuant to Rule 38 (1) (c) – i.e. for non compliance with orders of the Tribunal – is dismissed.
3. The Respondent's application to strike out the claims pursuant to Rule 38 (1) (b) – i.e. because the manner in which the proceedings have been conducted by the claimant has been scandalous, unreasonable or vexatious – is successful. The claim is therefore struck out.

REASONS

1. The Claimant filed his ET1 in respect of this claim on 2 August 2025.
2. Whilst a number of different boxes were ticked within the ET1 form and a number of heads of claim set out within the Schedule of Loss, I considered that the only matter actually particularised within the ET1 was a claim for arrears of pay during April, May, June and July 2025.

3. The Tribunal made case management orders on 8 August 2025, which included orders for a Schedule of Loss and for disclosure. These were not complied with by the Claimant within the time limit.
4. The Respondent did not file an ET3 within the time limit set out within the Rules (5 September 2025) and did so only on 16 January 2026, along with an application for an extension of time to present its response. On 21 January 2026, REJ Khalil directed that this application should be determined at the final hearing.
5. A final hearing was listed by video for 28 January 2026. The Claimant did not attend that hearing due to technical issues, although he attempted to attend in person after the hearing had already been adjourned. The Claimant was ordered by Employment Judge Wright, at that hearing, to confirm by 11 February 2026 whether he had complied with the earlier case management orders. The matter was relisted for 7 October 2026 with a time estimate of one day.
6. The Claimant again did not comply with the Tribunal's order, and consequently on 2 July 2026 the Tribunal issued further correspondence requiring an explanation by 9 July 2026. No explanation was received. On 6 August 2026 the Tribunal issued a further direction requiring compliance by 14 August 2026, with which the Claimant did comply.
7. At the hearing before me, Ms White and Ms Owusu-Asabere (director of the Respondent) attended in person. As the matter had been listed as a video hearing, and in order not to disadvantage the Claimant, I directed that Ms Wright and Ms Owusu-Asabere be seated in a tribunal room so as to be able to 'dial in' on Ms Wright's laptop. The Claimant attended by video and I also did so in a separate room from the Respondent, so as to ensure equality of arms.
8. During the hearing I was provided with a 171 page final hearing bundle, along with three witness statements from Ms Owusu-Asabere, a witness statement from the Claimant, and written submissions from Ms White. The Claimant also provided me with an audio recording of a meeting which took place on 28 August 2025 and a transcript of that meeting.

Application for extension of time to file a response

9. The Respondent applied for an extension of time to file a response. I considered submissions made by Ms White and the Claimant and the leading case of Kwik Save Stores Limited v Swain [1997] ICR 49. Considering the three core factors set out by Mummery J in that case:

- (1) Explanation for delay. The delay in this case was clearly significant, amounting to over four months. The Respondent's explanation was also not entirely satisfactory, as it was said that it had not appreciated the need

for a response to be filed within a deadline until it took legal advice. The Notice of Claim sent out to parties plainly sets out, in bold, the applicable deadline. The Respondent told me that it had been (as was accepted between the parties) engaged in settlement negotiations at around this time and reasonably thought that the claim would settle. Only when it became clear that it would not were legal advisors instructed. At that stage, a response was filed along with the application for an extension within seven working days. Ultimately, I consider that the explanation given was honest but unsatisfactory.

- (2) Merits of the defence. The Respondent plainly had an arguable defence to the claims of arrears of pay. Whilst it may have encountered difficulties in respect of its assertion that the Claimant had no minimum guaranteed hours (given the strictures of the visa scheme under which he was employed) there was a direct factual dispute as to which hours were worked, when, and why not.
- (3) Prejudice to the parties. The Claimant sought to argue before me that there would be significant prejudice to him as granting the application would cause delay, but that was not accurate. The defence had been in his possession for around nine months, and no delay would be caused by admitting it. The delay had already been caused by the adjournment of the previous hearing, and both parties were prepared for the hearing before me. Further, if his claim was meritorious, then the Respondent's defence would not assist them. In contrast, the Respondent would plainly suffer significant prejudice in being unable to defend the claim at all.

- 10. Having regard to both the interests of justice and the overriding objective, this application was granted. I carefully considered the unsatisfactory nature of the explanation given by the Respondent but ultimately decided that the prejudice to the Respondent of not admitting the defence tipped the balance in their favour, particularly given that all parties were now prepared for the hearing and had attended before me.

Rule 38(1)(c) application – non-compliance

- 11. The extension of time application having been granted, the Respondent was able to participate fully in the hearing. It submitted that the Claimant's non-compliance with multiple Tribunal orders should lead to a strike out under Rule 38(1)(c), on the basis that the failures had caused case management time to be wasted on the part of the Tribunal and had impeded the Respondent's preparation of the case. Ms White fairly conceded in her written submissions and before me that the overriding

question was whether a fair trial could proceed in the circumstances and that the Claimant had now complied with the orders.

12. The Claimant submitted that it would be highly unjust for the Tribunal to strike out on this basis, given that the orders had now been complied with. He explained that he was not a lawyer and had done his best at all times to understand and comply with directions.
13. I note that in Blockbuster Entertainment Ltd v James [2006] EWCA Civ 684 the Court of Appeal stated that it would take 'something very unusual indeed to justify the striking out, on procedural grounds, of a claim which has arrived at the point of trial' (at [19], per Sedley LJ), and that the guiding consideration when deciding whether to strike out for non-compliance with an order, is the overriding objective (Weir Valves and Controls (UK) Ltd v Armitage [2004] ICR 371). This involves the tribunal considering all the circumstances, including '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 possible' (at [17], per Judge Richardson).
14. A fair hearing was clearly still possible in this case, and in my judgment a strike out of the case on this basis would have been wholly disproportionate. All parties were in attendance, the non-compliance had been rectified, and the Respondent did not submit to me that they were lacking any document which was required. For that reason I refused the Claimant's strike out application in respect of this Rule.

Rule 38(1)(b) application – scandalous, vexatious or unreasonable behaviour

15. The Respondent then went on to submit that this claim should be struck out on the basis of scandalous, vexatious and/or unreasonable behaviour by the Claimant. The foundation for this application was the Respondent's contention that a document at page 166 of the bundle, which had been put forward by the Claimant to the Tribunal, was fabricated. That document purported to be an agreement between the Claimant and Ms Owusu-Asabere to settle the claim, signed on 28 August 2025 (albeit dated on its face 5 September 2025).
16. The document reads as follows (incorporating all grammatical and spelling errors):

REDRAWAL OF CASE

Claim number: 232033897600

In the matter of Franklin ADDO (claimant) v Jocelyn Cares Dormiciliary limited (Respondant)

We are happy to inform this honourable tribunal that both have agreed on the following:

1. *To abide by the national legal rule for calculating working hour, that is:*
 - *'Normal' weekly working hours (any period during which you are working or at the employers disposal and carrying out their activities or duties*
2. *to pay all outstanding remuneration including July pay, totalling £9,176.36 to claimant*
3. *To pay all outstanding travel time (T&T) applicable.*
4. *We have also handed claimant his login details to his payroll account.*

Jocelyn Owusu-Asabre

(Director)

Signed: [a signature appeared here]

Jocelyn Cares Domiciliary Limited (Respondant)

I, Franklin ADDO (claimant) have received all the due amount stated above and received the login details as well.

Hence, I will plead with this honourable tribunal to accept this as our final settlement of the above case.

Thank you.

Kind regards,

[a signature appeared here, along with the date 05/09/2025]

Franklin ADDO (claimant)

17. Given the serious nature of an allegation of fabrication, I heard sworn evidence from both the Claimant and Ms Owusu-Asabere and they were both cross-examined. Given the Claimant's status as a litigant in person I also asked some questions of clarification to Ms Owusu-Asabere and assisted him in putting clear questions to the witness.
18. The evidence of Ms Owusu-Asabere was that whilst she had met with the Claimant on 28 August 2025 and signed a document, that was not the document now contained within the bundle. The document she had signed was simply a commitment to seek settlement. She told me that the signature on that document was not hers and that she had not seen the document before the Claimant produced it in this litigation earlier this year.
19. The Claimant was similarly direct in stating that the document in the bundle was signed by Ms Owusu-Asabere and that this had happened at the meeting on 28 August 2025.

20. By definition, only one of the witnesses can have been correct in their version of events. I was therefore required to make a finding of fact as to the provenance of the document. I explained that I would be doing so on the balance of probabilities.
21. The primary legal considerations when considering an application under this part of Rule 38 were set out by Elias LJ in Abegaze v Shrewsbury College of Arts & Technology [2009] EWCA Civ 96 at [15]: "In the case of a strike out application brought under [r 38(1)(b)] it is well established that before a claim can be struck out, it is necessary to establish that the conduct complained of was scandalous, unreasonable or vexatious conduct in the proceedings; that the result of that conduct was that there could not be a fair trial; and that the imposition of the strike out sanction was proportionate. If some lesser sanction is appropriate and consistent with a fair trial, then the strike out should not be employed'.

Was the document fabricated?

22. In my view, the following factors were supportive of the Respondent's contention that the document was fabricated:
 - (1) The Respondent's name is misspelled towards the top of the document as Jocelyn Cares Dormiciliary Limited. Its actual name is Jocelyn Cares Domiciliary Limited.
 - (2) Ms Owusu-Asabere's name is also misspelled. In the document it is spelled Asabre, her actual spelling is Asabere.
 - (3) Ms Owusu-Asabere's signature on the document is different from her normal signature. That normal signature was evidenced by her signature on her passport, which was provided to me at page 171 of the bundle. The Claimant himself accepted under cross-examination that the two signatures were 'totally different'. He asserted that this may have been because the Respondent was trying to set up the suggestion from the beginning that the agreement was false, but I have been unable to understand why Ms Owusu would have wanted to do this. It appears common ground between the parties that they both wanted to settle at this time.
 - (4) The document is extremely sparse and lacking in detail given that it sought to bind the Respondent to paying the Claimant over £9,000. It also refers to matters not strictly covered in the ET1, such as travel time payments, but gives no figure in relation to them.
 - (5) The date on the document, which appears by the Claimant's signature but not by the signature of Ms Owusu-Asabere, is 5 September 2025. This postdates the meeting by over a week. The Claimant said that this was because whilst he signed and dated it at the same time as Ms Owusu-Asabere (i.e. 28 August 2025), he post-dated his signature so as to reassure the Respondent that he did indeed intend to withdraw his claim before the deadline for submitting an ET3.

- (6) The fact that the document advantages the Claimant by providing valuable evidence in support of his claim before the Tribunal.
23. Conversely, the following factors are supportive of the Claimant's contention that the document is not fabricated:
- (1) Ms Owusu-Asabere accepts that she had spoken to the Claimant before 28 August 2025 about settlement. She took the time to meet him on 28 August 2025 and accepts signing a document at that time. It is, the Claimant says, unlikely that she would have taken the time to have signed anything save for an actual agreement.
 - (2) The Claimant points out that his Schedule of Loss now amounts to over £27,000 (albeit that I explained to him that much of this relates to matters which are not currently before the Tribunal in his ET1) and that if he wanted to defraud the Respondent he would have fabricated that level of agreement and not just £9,000.
 - (3) The Claimant has provided a transcript of the 28 August 2025 meeting, which has not been significantly challenged by the Respondent, and in which Ms Owusu-Asabere plainly refers to having to pay an amount of money and plainly signs a document of some kind. Ms Owusu-Asabere appears upset during the conversation at the prospect of having to pay a 'huge amount' of money. The transcript refers, at points, to the document actually signed as having parts for the Claimant to sign and the Respondent to sign, just as with the document in question before me.
 - (4) The Respondent has not adduced any copy of the alleged true agreement. The Respondent says that this is because a copy was not provided to Ms Owusu-Asabere. The Claimant says that this is inherently unlikely, as she would obviously have wanted a copy of anything she signed.
 - (5) The Respondent has a motive for making false allegations of fabrication, in order to undermine an agreement which would lead to a real risk of it losing this case, and/or in order to have the case struck out.
24. This matter is finely balanced, and I have taken all of the above factors into account when making my finding of fact. Ultimately, I am persuaded by the fact that the purported signature of Ms Owusu-Asabere is completely different to that on her passport. It is also signed just underneath a spelling of her name which is wrong. No credible explanation has been presented for why Ms Owusu-Asabere would have signed this important document in a different way than her passport. The Claimant has not adduced any document which demonstrates Ms Owusu-Asabere using the form of signature contained on the purported agreement in

any other context. It is also inherently unlikely that Ms Asabere would not notice that the document she was signing did not spell her name correctly, and much more likely that the Claimant spelled her name wrong and then filled in the signature himself.

25. I also take note of the fact that the Claimant plainly has motive for adducing such a document – it would very much strengthen his claim. In opposition to that, if the Respondent was happy to settle for over £9,000 in August 2025, it is difficult to see why they would now resile from that and seek to go behind an agreement they had actually signed. If they wished to defend the claim, the easier course of action would simply have been not to sign such an agreement at all. It is highly improbable that Ms Owusu-Asabere would have deliberately signed with the ‘wrong’ signature and failed to correct issues such as the misspelling of her name as part of a scheme to ensure she could resile from the agreement if she wished to do so later on.
26. For those reasons, I find on the balance of probabilities that this agreement was created for the purposes of these proceedings by the Claimant and that it was not signed by Ms Owusu-Asabere.

Was the conduct of the prohibited type?

27. Given my finding of fact, it is evident that the Claimant has conducted this case in a scandalous, vexatious and/or unreasonable fashion. He has put forward a document to the Tribunal which he has fabricated. It is difficult to think of a more obvious example of the conduct prohibited under Rule 38(1)(b).

Is a fair trial still possible?

28. That being the case, I must then go on to consider whether a fair trial is still possible. I do not consider that it is. My finding is that the Claimant has fabricated a document. I am therefore unable to retain faith in him to put forward his case in an honest fashion. This is not a situation in which I have merely found the Claimant to be less than credible, I have found him to have behaved dishonestly in the face of the Tribunal. That fatally undermines the Tribunal’s faith in his evidence and further conduct of the case.
29. I have had regard to the decision of the Employment Appeal Tribunal in Sud v London Borough of Hounslow (UKEAT/0156/14) when considering whether this is a permissible conclusion to reach. As set out by Laing J at [33], in that case: “the Employment Judge referred in terms to the fact that the Claimant’s conduct had fatally undermined the trust that the Tribunal could have in her veracity. For those reasons, it seems to me that the Employment Judge’s conclusion that the appropriate course was to strike out the claim was one that was plainly open to her...”

Is strike-out proportionate?

30. Even though there has been prohibited conduct and a fair trial is no longer possible, I must still step back and examine matters in the round, so as to

determine whether strike-out is a proportionate sanction to impose. I recognise that it is a draconian sanction and should not be imposed readily.

31. In this case, my judgment is that strike-out is proportionate. Given the loss of faith suffered by the Tribunal in the Claimant's ability to put forward his case honestly, there is no alternative sanction which would enable this matter to proceed fairly.
32. The case is therefore struck out and consequently dismissed.

Footnote

33. You can appeal to the Employment Appeal Tribunal if you think this decision involves a legal mistake. There is more information here <https://www.gov.uk/appeal-employment-appeal-tribunal>. Any appeal must be made within 42 days of the date you were sent these written reasons.
34. There is also a right to have the decision reconsidered if that would be in the interests of justice. An application for reconsideration should be made within 14 days of the date you were sent these written reasons.
35. A decision may be reconsidered where there has been some serious problem with the process, such as where an administrative error has resulted in a wrong decision, where one side did not receive notice of the hearing, where the decision was made in the absence of one of the parties, or where new evidence has since become available. It is not an opportunity to argue the same points again, or even to raise points which could have been raised earlier but which were overlooked.
36. Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here: <https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>

Employment Judge Sellwood

Date 7 October 2026

JUDGMENT & REASONS SENT TO THE PARTIES ON
15 October 2026

For the Tribunal Office

P Wing