Case No: 60217298/2025

EMPLOYMENT TRIBUNALS

Claimant: Miss Jasmine Berry

Respondent: Nexus Fostering Limited

HELD AT: Cambridge/ CVP **ON:** 17 September 2026

BEFORE: Employment Judge Booth

Appearances

For the claimant: In person

For the respondent: Mr Mahmood (Counsel)

JUDGMENT

The respondent's application for strike out is refused.

FULL WRITTEN REASONS

1. The respondent applied for strike out of the claimant's claims. The respondent relied on three grounds under Rule 38 of the Employment Tribunal Rules of Procedure 2024 ("the Rules").

Application for Strike Out, Rule 38(1)(c) and (d)

2. The Tribunal first considered Rule 38(1)(c) non-compliance with an order of the Tribunal and Rule 38(1)(d) that the claim has not been actively pursued.

3. Following the earlier preliminary hearing, which took place on 27 May 2026, the parties were sent a record of the hearing which included (i) a case summary

based on the information that the claimant provided during that preliminary hearing (page 56-58 of the preliminary hearing bundle) and a draft list of issues prepared by EJ Illing based on the case summary (pages 58-63). EJ Illing highlighted in the draft list of issues in red text where additional information was needed from the claimant. The parties were ordered to work together to complete the list of issues (page 50). The record of hearing was sent to the parties on 23 June 2026. The claimant confirmed that she had received this.

4. On 3 July 2026, the respondent emailed the claimant a detailed list of the additional information she needed to supply to complete the list of issues (pages 87-95). The claimant responded on 20 July 2026 to say she would provide the information by 23 July 2026 (page 99). However, she did not do so and did not communicate with the respondent further in connection with this.

5. On 7 August 2026, the respondent applied for an unless order (pages 105-120). The application was made on the basis that the claimant had failed to provide proper particulars of the allegations and complaints in her claim and sought an order for the claimant to provide the same by 21 August 2026. The application also included application for strike out or a deposit order. This application was sent to the claimant and the Tribunal.

6. On 7 September 2026, the respondent made a further application for strike out or deposit order. This application was sent to the claimant and the Tribunal. Regional Employment Judge Foxwell confirmed to the parties that this would be dealt with in today's preliminary hearing.

7. The claimant was asked to explain why she had not provided the information highlighted in the case summary and draft list of issues. She explained that, at first, this was because she had been focused on providing information in relation to her dyslexia. She explained that this had taken some time to comply with and that the respondent's representative had subsequently asked her for further information on the point which had made it difficult for her to move on to the task of providing the information in the draft list of issues.

8. The claimant explained that, when she tried to provide the information highlighted in the case summary and draft list of issues, she realised that she needed support to do this. She agreed that the summary that the respondent sent by email on 3 July 2026 was helpful and not too legalistic but explained that she had difficulty in cross referencing between the information in the case summary and draft list of issues and the summary in the email and described that this is due to her dyslexia. She realised that she needed to find someone who could help her at a price that she could afford and was eventually able to instruct Chantelle Knight of NeurodiverseLIFE. The claimant acknowledged that she could have communicated with the respondent more about this but described that she had felt very stressed and panicky about it.

9. On 7 September 2026, Ms Knight emailed the Tribunal to provide additional information about the claimant's dyslexia. The claimant stated that this letter had also been sent to the respondent. This included some explanation of the

difficulties the claimant had in providing the information. Ms Knight explained that the claimant had knowledge of her claim and was able to describe her experiences, explain events and their context verbally. She described that the difficulty arose when the claimant was required to put that information into a written, structured format. The claimant confirmed that she was ready and able to provide the information within this preliminary hearing.

10. Mr Mahmood outlined the respondent's application for strike out on these grounds, including the chronology of events leading up to the application, which has been summarised out above. Mr Mahmood explained that the respondent's position is that, although the claimant engaged with them in relation to providing information about her dyslexia, she did not engage in relation to the information highlighted in the case summary and draft list of issues and did not comply with the order to work with the respondent to complete the draft list of issues. These are the grounds on which the respondent asks the Tribunal to strike out the claimant's claim on the grounds of Rule 38(1)(c) non-compliance with an order of the Tribunal and Rule 38(1)(d) that the claim has not been actively pursued.

11. The Tribunal considered all of the information above and concluded that it cannot be said that the claimant has failed to actively pursue her claim and, the grounds in Rule 38(1)d has not been established. The claimant has been in regular contact with the respondent with regard to elements of her claim, most notably the information needed to determine whether her dyslexia is a disability for the purposes of the Equality Act 2010. Although the claimant has failed to communicate with the respondent about the information highlighted in the case summary and draft list of issues since 20 July 2026, the Tribunal considers that the claimant had been taking reasonable steps to source support with this as evidenced by Ms Knight's letter to the Tribunal of 7 September 2026, only 7 weeks later.

12. The Tribunal has considered that the claimant did not comply with the order to work with the respondent to complete the draft list of issues. Again, although the claimant has failed to communicate with the respondent about this since 20 July 2026, she and Ms Knight have explained the difficulties that she had in complying with this order. In the preliminary hearing the claimant was able to provide the necessary information verbally, to a good level of detail and with good recollection and reference to relevant documents. The Tribunal concluded that it is arguable that the grounds in Rule 38(1)(c) have been established, but concluded that it would not be proportionate to strike out the claimant's claim on this basis because the claimant has explained the difficulties that she faced and took proactive steps to address these difficulties by instructing Ms Knight, the necessary information has now been supplied, and it is still possible for there to be a fair hearing of the issues. The application for strike out on these grounds therefore fails.

<u>Application for Strike Out, Rule 38(1)(a) and Application for Deposit Order, Rule 40</u>

13. The respondent's application for strike out further relied on Rule 38(1)(a) on the grounds that the claimant's complaints have no reasonable prospect of success.

In the alternative, the respondent sought an order under Rule 40 that the claimant pay a deposit to continue with her complaints on the grounds that the claimant's complaints have little reasonable prospect of success.

14. Mr Mahmood directed the Tribunal to the case of **Madarassy v Nomura International Plc [2007] EWCA Civ 33**, which is authority that for a claim of discrimination to succeed there must be primary facts from which the Tribunal could properly conclude on the balance of probabilities (and in the absence of further explanation) that discrimination took place. In most cases, this will mean that "something more" is required than a mere difference in treatment and a difference in protected characteristic, there must be something from which the Tribunal can infer that (in the absence of another explanation) that the difference in treatment was because of or related to the difference in protected characteristic. The Tribunal has also considered the case of **Glasgow City Council v Zafar [1998] IRLR 36, HL**, which is authority that the Tribunal is not obliged to infer from the fact that an employer acted unreasonably towards the claimant that this is because of the claimant's protected characteristic.

15. Please refer to the combined case summary and list of issues in the record of preliminary hearing of 17 September 2026 for the details of each of the claimant's complaints. Having carefully considered the information set out in respect of each complaint, the Tribunal is not persuaded that any of the claimant's complaints have no reasonable prospect of success. In each complaint, the claimant has described the treatment complained of and, where necessary, provided a comparator which may help to demonstrate less favourable treatment. The claimant states that the "something more" in connection with her complaints of race discrimination is the fact there is more than one complaint is evidence of discrimination and that the build up of complaints shows a pattern of treatment towards her that was less favourable to that of her comparator. She described that she felt other colleagues got more support, flexibility and feedback and were not spoken to in the same tone that she was. The Tribunal believes that this is unlikely to be sufficient for the Tribunal to infer that there has been discrimination and for the burden of proof to shift to the respondent, but it cannot be said to have no reasonable prospects of success. The application for strike out on this ground therefore fails.

Approved by:

Employment Judge Booth
Date 18 September 2026

JUDGMENT SENT TO THE PARTIES ON

2 November 2026

FOR THE SECRETARY OF THE TRIBUNALS

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