EMPLOYMENT TRIBUNALS

Claimant: LK

Respondent: CWM Aggregates LTD

Heard at: **Southampton**

On: **31 July 2026**

Before: **Employment Judge Rayner**

Representation
Claimant: Mrs Simpson , Counsel
Respondent: Mr Wayne Cowley, litigation Consultant
Mr Ian Wheaton counsel

JUDGMENT

1. The Respondent's response to the claim in respect of liability is struck out.

2. The claimant's claim's will be determined at a hearing on 10/11 November 2026, before a judge sitting alone, by CVP.

3. The liability hearing will be followed by a remedies hearing on the same dates , at which the respondents will be entitled to attend and make representations.

REASONS

1. This claim was originally listed for a final hearing for five days starting on the 27 July 2026 until 31 July 2026.

2. The hearing today was a preliminary hearing to determine applications by the claimant, to

   2.1. strike out the respondent's response
   2.2. To amend her list of issues
   2.3. For an anonymity order

2.4. For permission to extend the length of her witness statement to 10,000 words
2.5. For costs against the respondent.

3. The background to the applications being made today relevant in particular to the claimant's application for strikeout, and my findings of fact, are as follows.

4. The claimant made her application to the Employment Tribunal on the 13 November 2024. Parties attended at a case management hearing on the 2 September 2025 before Employment Judge Cadney.

5. The Respondent was represented throughout, until part way through this hearing, by Croners.

6. At that hearing case management orders for the preparation of the final hearing were made as follows

7. The parties were to disclose documents by the 27 February 2026

8. The respondent would take responsibility for the creation of a bundle sending a draft index to the claimant by the 1 May 2026

9. A final bundle was to be prepared by the respondent not exceeding 300 pages to be sent to the claimant.

10. The parties were required to exchange witness statements by the 12 June 2026

11. The parties were required to confirm to the employment tribunal that they were ready for hearing by the 20th of July 2026.

12. The issues in the case were recorded as being a claim of discrimination on grounds of disability breach of contract relating to notice unlawful deductions from wages accrued but unpaid holiday pay a failure to provide a written statement of employment particulars and other payments.

13. There was a list of issues agreed including the question of whether or not the claimant had a disability which was at the point of the case management hearing still disputed by the respondent. Disability was subsequently conceded.

14. In respect of disability discrimination, the claimant brought claims of direct disability discrimination; discrimination for a reason arising from disability and a failure to make reasonable adjustments. Her claims included claims that she was discriminated by being dismissed on the 19 August 2024.

15. The case management order was sent to the parties on the 27 September 2025, and it is not in dispute that both the respondents themselves as well as

their representative, Croners, were aware of the orders made at that case management hearing.

16. The respondents were represented by Mr W Cowley a consultant with Croners at that hearing as they have been throughout.

17. Orders were also made in respect of potential judicial mediation, and on the 7 November 2025 the claimant wrote to the respondent representative noting that she had not received a counter schedule as had been ordered, and asked whether the respondent intended to send one and if so when.

18. No response was sent to the claimant.

19. The claimant wrote to the respondent again on the 24 April 2026 asking whether or not the respondents were interested in mediation.

20. The claimant received no response. The claimant wrote again on the 24 April 2026 asking for a response to her e-mail within a week but received no reply.

21. On 27 April 2026 the claimant wrote to the respondent representative reminding them that the hearing bundle was to be agreed by 4:00 PM on the 1 May 2026 and that they must agree the documents to be used at hearing. She said she had not yet had a copy of the hearing bundle to review and agree and following a phone call, she had been told that she could expect to receive a copy of the hearing bundle in mid-Aril to review. She said she had sent further evidence on the 22 April 2026 to be included in the bundle and asked for confirmation that they had received it.

22. The claimant did not receive a response

23. On 28 April 2026 the claimant asked the respondents to send a paper copy of the hearing bundle as well as an electronic copy of the bundle.

24. On the 29 April the claimant asked for the replacement of one of her documents with a different version, and noted that she had not yet received a copy of the hearing bundle and asked when she could expect to receive it. She said she needed time to read and review it before agreeing it by the 1 May which was then only two days away.

25. It is noted that the claimant was acting as a litigant in person throughout this period of time.

26. The Respondent did not reply

27. On the 1 May 2026 the claimant wrote to the Respondent, notifying them that they had missed the deadline for the case management order to provide the file of documents for the hearing. She requested that they send it within 24 hours that would be by 4:00 PM on Tuesday, 5 May 2026.

28. The Claimant received no response and wrote again on the 8 May 2026 reminding the respondent that the bundle was meant to be agreed by the 1May 2026 referring to the case management order and pointing out that she had not yet received it the claimant received no reply

29. The Claimant wrote to the employment tribunal on the 8 May 2026 and forwarded her e-mail to the Respondent on the 11 May 2026.

30. She noted that the e-mail was urgent as a five day final merits hearing was starting on the 27th of July 2026 and stated that the respondent had been ordered to provide a file of documents by the 1 May 2026 and it failed to do so; that she had made several attempts to chase the respondent in respect of the hearing bundle and set out the text of her correspondence.

31. She said it was having an impact upon her as she was unable to properly prepare for the hearing or instruct counsel. She was sending a fifth chaser to the respondent representative but if she did not receive the bundle by the 15th May 2026 she would be making an application to strike out the response on the grounds of unreasonable conduct; non compliance with ET orders; not actively pursuing the response and a fair trial no longer being possible. She said if the final hearing needed to be postponed as a result, she would be making an application for costs.

32. On the 26 May 2026 legal officer Hulbert directed the Respondent to provide an update of their compliance, asking whether the parties had been able to agree any variations necessary and asking for a response by the 2 June 2026.

33. No response was received from the Respondent either by the claimant or by the tribunal.

34. On 8 June 2026 the Claimant wrote to the employment tribunal with a copy to Croners, making an application for an order to strike out the response or in the alternative seeking an unless order.

35. That application was predicated on the manner in which the proceedings had been conducted by or on behalf of the respondent having been scandalous unreasonable or vexatious; that there had been non compliance with the employment tribunal rules and an order of the tribunal; that the response had not been actively pursued and that it was no longer possible to have a fair hearing in respect to the response.

36. The claimant set out in detail the chronology of events and the chronology of lack of engagement by the respondent.

37. The claimant stated that the respondent's failures were significant because the claimant had lost the opportunity to resolve matters by way of judicial mediation, despite the respondent having previously indicated a willingness and because she was now unable to adequately prepare for the final hearing

due to the lack of a bundle. She pointed out that she was a litigant in person who was being supported by direct access barrister. She pointed out that the respondent was an organisation with professional legal representation. She said that she was now being put to the time and expense of compiling the final hearing bundle herself and that she would be unable to meet the deadline to exchange her witness statement by the 12 June 2026 because she had no bundle to refer to.

38. As a result, she was she was unable to adequately prepare for the final hearing or to instruct counsel to advise fully in respect of the claim. She noted that the final hearing was imminent and council's brief fee for a 5 day hearing would shortly be incurred even though the hearing may not go ahead. She said without an order from the tribunal the claimant must prepare for the final hearing as though proceeding as listed.

39. She pointed out that an adjournment would cause significant prejudice to her and would not necessarily secure the respondent's engagement. She pointed out that her employment had been terminated almost two years ago and further delay would be contrary to the interests of justice. She said the respondent was not working towards a trial that is fair, in the sense of avoiding the undue expenditure of time and money taking into account the demands of other litigants and the finite resources of the tribunal.

40. She said the respondent had displayed a disrespect for the tribunal and its procedures and that it was unjust to allow them to continue to have access to the tribunal for their response. She said that she had suffered and would suffer prejudice.

41. As an alternative to strikeout, she asked for an unless order that the respondent provided a first draft of the final bundle.

42. In respect of witness statements, the claimant aimed to complete a final hearing bundle with the assistance of counsel by Friday the 12 June 2026 and requested an extension of time to comply with direction in respect of witness statements until Friday the 3rd of July she also applied for an extension of her witness statement from 5000 to 10,000 words and set out her reasons for that. She reserved the right to make an application for costs .

43. On 15 June 2026 the parties were written to by Employment Judge Self who stated as follows*: Employment Judge Self is concerned that the respondent is not actively pursuing its response. Unless by 18 June 2026 the respondent explains why it is in default of the case management orders and provides the claimant with a draft paginated bundle the response will be struck out.*

44. On the 24 June 2026 the claimant wrote to the tribunal making a further application to strike out the respondent's response, alternatively to reinstate the application for an order to strike out the response.

45. She referred to the respondent’s default but said it was arguable on other grounds.

46. She said that following the *unless* order from Employment Judge Self the respondent had sent her an e-mail and a draft bundle at the last minute, in which Mr Cowley , a consultant with Croners, stated he had been tied up with a large number of cases and covering for colleagues, and that he thought the bundle had been sent when it had not been sent . She attached a copy of the e-mail which had been sent on the 18 June 2026 at 15.42 in the afternoon.

47. I have been referred to that e-mail and note that it was not copied to the tribunal.

48. The text is as follows
I do apologise as the bundle had been prepared some time ago but due to being tied up in a large number of cases and also covering for colleagues that had been unavailable or who had left the company I thought it had been sent when it had not been.

49. I remind myself that this was a draft bundle not a final agreed bundle.

50. It is questionable whether or not that brief e-mail can be said to explain the respondent's default in the light of the numerous emails and reminders sent by the claimant and the request from legal officer Hulbert for confirmation that orders were being complied with.

51. It does the very bare minimum, although it fails to write to the employment tribunal at all.

52. The claimant pursued a strikeout application stating that the respondent's explanation for their failures were not good enough and did not explain why no response was sent to the many chasers and also highlighting that they had missed a further case management direction which was for the exchange of witness statements by 12 June 2026.

53. The claimant also applied for an extension to the length of her witness statement and to make some amendments, most of them minor, to the list of issues. The respondent did not reply or comment on either application and it was referred to an employment judge, and on the 13 July 2026 Employment Judge Gray directed the parties to be written to and the respondent was directed to provide comments on the claimant's correspondence of the 24 June and the 2nd to 10th of July 2026 by 4:00 PM on the 15th of July 2026.

54. The respondent failed to do so.

55. The claimant wrote back to the tribunal objecting to the extension of time until the 15 July and requesting a decision on her application to strike out.

56. She set out again various matters and indicated that she was ready to proceed with the final merits hearing, but nonetheless reasserted her application to strike out the respondent.

57. On the 16 July 2026 the claimant wrote again to the employment tribunal asking for a decision on her strikeout application. She stated she had still received no correspondence from the respondent at all, other than one cursory e-mail that they had failed to actively pursue their response. It is clear at this point the respondent had not responded and had not provided the claimant with a date to exchange witness statements.

58. The claimant said that the hearing was just one week away; the constant noncompliance was causing her significant distress. She reiterated that she was fully prepared for the hearing and had followed all the tribunal orders she had prepared a bundle and witnessed statements and she did not want the final hearing to be delayed through no fault of her own. She said that it would cause her further emotional distress but also financial detriment as she had already incurred counsel's brief fee.

59. On the 20th of July the claimant sent a copy of the final bundle for use at the final hearing; a copy of her witness statement and statements of two other people she intended to call; a copy of a privacy application an amended list of issues showing tracked changes an updated schedule of loss and a costs application with a schedule of costs to the tribunal.

60. The respondent made no response whatsoever and did not provide any copies of any witness statement either to the claimant or to the tribunal

61. On the 21 July 2026 Employment Judge Cadney wrote to the parties stating that, on the basis of the claimant's correspondence, to which the respondent had not replied despite the order of the 13th of July requiring a response by the 15th of July, the parties had not agreed the bundle nor exchanged witness statements. In addition, there were outstanding case management applications and in the circumstances he considered the final hearing would be vacated and relisted for a three hour preliminary hearing to determine the strikeout application and give such further case management orders as might be necessary.

62. It is fair to say that the claimant was extremely disappointed and upset by this order and wrote to the tribunal urging them to reconsider, since she herself was ready for the hearing.

63. EJ Cadney declined to reconsider but noted that the circumstances of the hearing being vacated were factors that could be taken into account when the judge considered the claimant's application for strikeout of the respondent's response

64. On 30 July 2026 at 11:10am, the day before today's hearing on the 31 July 2026 the respondent, CMW Aggregates, wrote to the employment tribunal, stating that they had been made aware by Mr Cowley, that he had been advised on the 24 July 2026 that the hearing was being postponed.

65. They said they had struggled to get in touch with him prior to the hearing and had asked for the copy of the court communication regarding the postponement details, but to no avail. They asked if the court could send a copy to them, so that they could digest the information prior to the preliminary hearing. They also asked for a copy of the video link to be sent to them.

66. The tribunal wrote back to confirm that the hearing remained listed and they were provided with a video link and attended at the hearing.

67. At today's hearing the claimant attended with her counsel Mrs Simpson. The respondents, Mr George Rope and Ms Maria Robbie attended with their representative Mr Cowley of Croner, and Mr Wheaton of Counsel attended as an observer.

68. I refer to Mr Rope and Ms Robbie as the respondent form here on, and to their representative as Croner.

69. Mr Wheaton told me that he had been engaged by the two respondents from CWM Aggregates to observe proceedings, but confirmed that he would be taking no part.

70. I proceeded to deal with the anonymity order; the application in respect to the witness order and the amendment to the list of issues, all of which was straight forward and unopposed by the respondent.

71. I noted that no response to any of the claimant's applications has ever been received from the respondent. Mr Cowley accepted that this was the case.

72. Moving to the application from the claimant to strike out, Mrs Simpson made oral representations on behalf of the claimant. She said :

73. Mr Cowley made representations on behalf of the respondents.

74. He told the tribunal that it was quite right that he had failed to engage with the proceedings at all, and he explained that this was due to excessive workload levels; sickness of colleagues and some absences of his own.

75. He accepted that he had not written to the employment tribunal to explain his failures to comply with case management orders at any time, nor had he ever written to seek extensions to such orders. Further he accepted that he had not written to the claimant and accepted that he had failed to reply to her correspondence at any point, except when subjected to an *unless* order.

76. He accepted that he had not complied with orders in respect of witness statements and accepted that he had not produced them, even at today's hearing.

77. He accepted full responsibility and accepted that his conduct of the proceedings on behalf of his client had been unreasonable, and that he had failed to comply with case management orders or to actively pursue the case. He said that this was a failing of Croners, not a failing of the respondents.

78. I raised a concern that there appeared to be a potential conflict of interest between the respondents and their representatives, at which point Mr Wheaton sought to make representations to the tribunal on behalf of the respondents. The Judge declined to hear from him as at that point, as he had no standing in the case, and it was unclear on what basis he would be making any representations. However, Mr Cowley applied for and was granted a 5 minute adjournment, following which he said he had been temporarily dis-instructed, and that the Respondents had instead instructed Mr Wheaton.

79. Mr Wheaton confirmed that he had been instructed on a direct access basis and also confirmed, following a number of concerns expressed by Mrs Simpson and me, about the manner in which a direct access barrister may be engaged, that he had gone through the necessary steps to be engaged by the respondents the previous day and that he was satisfied that he was properly engaged to speak on their behalf before the tribunal today.

80. Mrs Simpson not unreasonably objected to Mr Wheaton being given leave to speak, on the grounds that she had no notice of his involvement, no notice that the respondents might wish to make separate representations and no notice of what those representations might be.

81. On the basis of his undertakings and assurances to the court that he was properly instructed, I determined that he could make brief representations on behalf of the respondents before she adjourned to consider whether or not to strike out the response .

82. I determined that it was appropriate and in the interests of justice and the overriding objective, given the seriousness of the application to strike out, to hear from Mr Wheaton.

83. He made applications on behalf of the respondents.

84. Neither counsel made reference to any guidance from case law and in particular Mr Wheaton made no reference to any case law guidance to support his proposition that the respondents CWM Aggregates limited, could be separated from the actions of Croners, their representative of record, in terms of fault for non compliance with court orders or pursuance of proceedings.

85. Conclusions and Law

86. Having considered all of the evidence and submissions before me, I have concluded that the Response should be struck out. My reasons are as follows.

87. There can be no doubt that the Respondent's representatives, Croner, repeatedly and seriously failed to comply with the Tribunal's orders and failed to prosecute the case in any reasonable manner. Their failure to engage with the Claimant in any meaningful way, or at all, over an extended period is extraordinary and unreasonable.

88. Equally extraordinary and unreasonable was their failure to contact the Tribunal to make any application, once it became apparent that they were experiencing difficulties in complying with case management orders.

89. Case management orders are not voluntary. They are binding orders of the Tribunal. Whilst there are circumstances in which isolated failures to comply may be excused, this is not such a case. The non-compliance here was persistent, substantial and unexplained. The unreasonable behavior is, in the circumstances capable of justifying strike out.

90. I find that the relevant circumstances include in particular the absence of any meaningful apology, expression of remorse, or substantive attempt to rectify matters.

91. Throughout the proceedings the Claimant made numerous attempts to engage with the Respondents themselves as well as with and their representatives. Those attempts went unanswered and unacknowledged .

92. The Claimant was ultimately required to seek, and obtain, an Unless Order.

93. Having reviewed the Tribunal file and the Claimant's application, I am satisfied that the criticisms made by the Claimant in relation to the conduct of the Respondent and Croner are well founded.

94. The Respondent submits that the delays arose because of workload pressures and ill health affecting those dealing with the matter. Mr Cowley candidly referred to those difficulties.

95. The Tribunal is not unsympathetic to such circumstances. Individuals and organisations may from time to time encounter genuine difficulties. However, where that occurs, the proper course is to engage openly with both the Tribunal and the opposing party, explain the difficulties, and seek appropriate relief or alternative arrangements. That did not happen in this case.

96. I have considered carefully whether the consequences of strike out should fall solely upon Croner or whether responsibility also attaches to the Respondents themselves.

97. I accept Mr Wheaton's submission that the Respondents were aware of the case management orders and the relevant deadlines. The appointment of legal representatives does not absolve a party from all responsibility for the conduct of litigation.

98. Mr Wheaton appears to have been instructed directly by the Respondent only shortly before this hearing. No satisfactory explanation has been provided as to why such steps were not taken at an earlier stage or indeed what steps were taken, or when or what prompted them.

99. If, as has been suggested, the Respondent had concerns about the progress of the litigation or had attempted to obtain information from its representatives, it ought to have taken earlier and more effective steps to address those concerns.

100. The Respondent was aware that a final hearing had been listed and that witness statements were required. The witness statements would necessarily have contained the Respondent's own evidence. The Respondent therefore knew, or ought reasonably to have known, that preparation of such evidence was required.

101. The circumstances in which separate representation emerged at this hearing are themselves unusual. Mr Wheaton initially attended as an observer. It was only during the course of the hearing, following an adjournment sought by Mr Cowley, that Mr Wheaton informed me that he had been instructed by the Respondent and that Croner had been dismissed. I permitted Mr Wheaton to address the Tribunal on the Respondent's behalf because there appeared to be a potential conflict of interest.

102. However, any such concerns must have arisen before the date of the hearing. They certainly ought to have arisen once the Respondent became aware that a previous hearing had been adjourned because of failures to comply with Tribunal orders.

103. No explanation has been provided for the complete absence of advance notice regarding the matters raised by Mr Wheaton. Nor was any documentary evidence produced demonstrating steps taken by the Respondent to remedy the ongoing failures.

104. The consequences of the failure to comply with orders and actively pursue the proceedings have been significant. A five-day final hearing has been lost.

The Claimant was required to undertake work which should have been carried out by the Respondent, including preparation of the hearing bundle. She has incurred the costs of instructing counsel both for the listed final hearing and for this hearing. Those are substantial matters. The claim was presented in 2024 and, if relisted, would not now be heard until approximately spring 2027. Such delay is unacceptable and is wholly attributable to the inaction of the Respondent's representatives and, to a lesser extent, the Respondent itself.

105. I accept the submissions made on behalf of the Claimant that the true cause of the adjournment was the Respondent's failure to engage with the proceedings and its failure to comply with case management orders. I also accept that the Claimant's applications relating to amendment of the issues, witness statement length and anonymity could have been addressed quickly at the start of the final hearing. In themselves, they did not necessitate adjournment.

106. I further accept that the Claimant reasonably expected the final hearing to proceed and that, if successful, the matter would then move to a remedies stage. Instead, she has been required to pursue strike out proceedings. I accept that this has caused her significant stress and distress.

107. I also accept that the necessity of continually attempting to engage with a non-responsive Respondent has caused further prejudice.

108. In considering whether or not to grant the application to strike out, I have reminded myself of the relevant authorities, including *Weir Valves & Controls UK Ltd v Armitage*, and of the need to consider proportionality, responsibility for the defaults, prejudice, and whether a fair hearing remains possible. I have also borne in mind the principles set out in *De Keyser Ltd v Wilson*, *Blockbuster Entertainment Ltd v James*, and related authorities.

109. I have reminded myself in particular that the Court of Appeal articulated a number of considerations that I must take into account when considering striking out because of the manner in which the proceedings have been conducted his scandalous unreasonable or vexatious contrary to rule 38(1) ET Rules of Procedure 2024. in *Blockbuster Entertainment Ltd v James [2006] EWCA Civ 684*, *[2006] IRLR 630*, at [5], per Sedley LJ

110. ``This power, [of strike out] as the employment tribunal reminded itself, is a draconic power, not to be readily exercised. It comes into being if, as in the judgment of the tribunal had happened here, a party has been conducting its side of the proceedings unreasonably. The two cardinal conditions for its exercise are either that the unreasonable conduct has taken the form of deliberate and persistent disregard of required procedural steps, or that it has made a fair trial impossible. If these conditions are fulfilled, it becomes necessary to consider whether, even so, striking out is a proportionate

response. The principles are more fully spelt out in the decisions of this court in *Arrow Nominees v Blackledge [2000] 2 BCLC 167* and of the EAT in *De Keyser v Wilson [2001] IRLR 324*, *Bolch v Chipman [2004] IRLR 140* and *Weir Valves v Armitage [2004] ICR 371*, but they do not require elaboration here since they are not disputed. It will, however, be necessary to return to the question of proportionality before parting with this appeal."

111. A concise summary of the approach to take to consideration of a strike out under what is now r 38(1)(b) (in cases other than of wilful disobedience) was given by Elias LJ in the Court of Appeal in *Abegaze v Shrewsbury College of Arts & Technology [2009] EWCA Civ 96*, *[2010] IRLR 236* 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'.'

`The reference to the conduct being "deliberate" would probably exclude mere oversight or negligence which is not the result of any intentional or deliberate failure to implement proper systems for managing case progress', per Choudhury J in *Emuemukoro v Croma Vigiliant (Scotland) Ltd UKEAT/0014/20*, *[2022] ICR 327*.

112. 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 EAT/0296/03*, *[2004] ICR 371*; for the overriding objective generally, see para [68] ff). This requires the judge or tribunal to consider 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).

113. I remind myself that , in exceptional circumstances, where there has been 'wilful, deliberate or contumelious disobedience' of a tribunal order (*De Keyser Ltd v Wilson* [2001] IRLR 324, EAT, per Lindsey P at [25], described in similar terms by the Court of Appeal in *Blockbuster Entertainment Ltd v James* [2006] EWCA Civ 684, [2006] IRLR 630, at [5], per Sedley LJ, as a situation where there is 'persistent wilful disobedience of an order'), a claim may be struck out without the tribunal needing to investigate or conclude that a fair trial was impossible (although proportionality remains a consideration). Usually, the proportionality assessment includes that of whether a fair trial is possible in any case. If it is held by a tribunal that a case falls within the exceptional circumstance where the fairness of the trial is not a consideration, the basis for that conclusion must be explained by the tribunal (see Simler P in Daly v Northumberland Tyne and Wear NHS Foundation Trust UKEAT/0109/16 (7 July 2016, unreported)).

114. I recognise that primary responsibility for the conduct of this litigation falls upon Croner. Their failures were serious, persistent and inexcusable and unreasonable .

115. There was virtually no engagement with either the Tribunal or the Claimant.

116. Nevertheless, I do not consider it possible to conclude that the Respondent bears no responsibility. The Respondent was aware of the proceedings and had opportunities to intervene at an earlier stage. It ultimately secured alternative representation at the eleventh hour. No convincing explanation has been provided as to why that could not have occurred much sooner.

117. In relation to prejudice, I accept that prejudice is inherent in a failure properly to pursue litigation. In this case there is also specific prejudice. The Claimant has suffered significant stress as a result of prolonged delay; has repeatedly sought unsuccessfully to obtain responses; has disclosed her witness statement without receiving any in return; has prepared the hearing bundle herself; and has incurred the costs and effort associated with preparing for a five-day hearing which did not proceed.

118. Whilst the Respondent may be prejudiced by being unable to defend the claim, the balance of prejudice is overwhelmingly to the disadvantage of the Claimant.

119. I conclude that the conduct of the Respondent and its representatives has involved serious, inordinate and inexcusable failures. It has been unreasonable .

120. Croner's conduct has been contumelious in the sense that it has demonstrated a disregard for the authority of the Tribunal and its orders.

121. From my findings of fact and conclusions on the behaviour of the respondent representative and the respondent themselves, I considered that this is a case where there is persistent and wilful disobedience of orders such that it may not be necessary to consider whether or not a fair trial remains possible.

122. However in this case, I have nonetheless considered whether a fair hearing remains possible.

123. The issue is not simply whether a hearing could theoretically take place at some future date. Fairness requires consideration of the overriding objective,

including the saving of expense, the need for parties to cooperate with each other and the Tribunal, equality of arms, and the need for cases to be determined expeditiously. Delay is itself a relevant factor.

124. Although Mr Wheaton submitted that witness statements could be exchanged within a short period, the fact remains that they had not been exchanged by the date of the final hearing. Having regard to the history of this matter, I have no confidence that any future case management orders would be complied with promptly, or at all.

125. I have considered whether a further Unless Order would be an adequate alternative. In my judgment it would not. The Respondent has already been afforded ample opportunity to comply with its obligations, including the benefit of an earlier Unless Order.

126. Having weighed all relevant factors carefully, I conclude that a fair hearing is no longer possible. That conclusion arises primarily from the additional delay which would be required, the resulting inequality between the parties, the additional costs imposed upon the Claimant, and my lack of confidence that future orders would be complied with.

127. Accordingly, I am satisfied that the requirements of Rule 38 are met. The manner in which the proceedings have been conducted on behalf of the Respondent has been unreasonable. There has been serious non-compliance with Tribunal orders. The proceedings have not been actively pursued. In addition, a fair hearing is no longer possible.

128. I therefore order that the Response be struck out.

129. However, I do not consider it proportionate entirely to exclude the Respondent from further participation in these proceedings. As this is a discrimination claim, the Claimant continues to bear the burden of proving her case. The Tribunal will therefore need to hear evidence from the Claimant and make findings of fact before determining liability.

130. If liability is established, there will be a remedies hearing. I consider it appropriate that the Respondent, notwithstanding the strike out of its Response, should be permitted to make representations and participate in relation to remedy. Such participation is limited to remedy and does not extend to defending liability.

131. Finally, I note that any prejudice suffered by the Respondent as a result of the conduct of its professional representatives may potentially give rise to other remedies against those representatives, if the Respondent is so advised. That consideration does not affect my conclusion regarding strike out.

Employment Judge Rayner
Date 23 October 2026

JUDGMENT & REASONS SENT TO THE PARTIES ON
09 November 2026

FOR THE TRIBUNAL OFFICE