IN THE EMPLOYMENT TRIBUNAL

Claim No. 40/2024

BETWEEN:

AHLAM ZAKI

Claimant

-AND-

OXFORD LEARNING LIMITED

Respondent

JUDGMENT

The Respondent's application that its Response should not be struck out, as Ordered on 1 April 2025, is dismissed. The Response is therefore struck out and the effect shall be as if no Response had been presented.

Chairperson: Ms Gabrielle O'Hagan
For the Claimant: Ms Grace Lima and Ms Tessa Rosada Standen of Hassans
For the Respondent: non-attendance
Preliminary Hearing: 14 May 2025

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1. The Respondent employed the Claimant as a Customer Adviser Trainee from either the 1st or the 9th (the date is not agreed) October 2023.

2. The Claimant's ETB Notice of Terms stated the Claimant's employment to be for an indefinite period with a one month either way notice period. The Respondent applied for and was issued with a work permit for the Claimant (a Moroccan national) valid from 1 October 2023 until 29 September 2024.

3. On 6 March 2024, the Claimant notified the Respondent that she was pregnant and that her expected date of childbirth was 13 October 2024.

4. On 30 September 2024, the Respondent terminated the Claimant's employment without notice, citing "end of contract" in the ETB Notice of Termination.

5. The Claimant filed a Claim Form, with attached Details of Claim, on 23 December 2024 making claims for unfair dismissal, pregnancy or maternity discrimination, race discrimination and breach of contract and seeking compensation and arrears of notice pay.

6. The Respondent filed a Response Form with attached Particulars of Response on 10 January 2025 defending the Claim, principally on the ground that the alleged reason for the termination was because the Claimant was purportedly unable to legally work in Gibraltar.

7. On 19 February 2025, the Claimant's husband, Mr Suat Kirk, received via DHL Express Gibraltar (**DHL**) an undated letter, together with copies of the Claim Form and Response Form (which I shall call **the Letter**), which referred to "*the flimsy case [the Claimant] has brought about indicated in the additional sheets*" and included inter alia the following passages (emphasis added):-

"*I saw you and your new wife walking through Ocean Village last weekend. And your wife, along with staring at me with a goading smile, held up her phone as if to say, 'I will video you if you do anything'…*"

"This could indicate that ***you don't know what your wife is doing behind your back whilst sneaking about and meeting male representatives she is somehow manipulating to act in her favour. … one may ask how she is able to do this, or maybe not.***"

"*Unfortunately,* ***your wife is dragging you and your family into something you will not be able to get out of if it goes on for much longer, so I am giving you the option of either stopping it, or joining your wife and new family in their thievery****. It is only fair, as* ***I intend to make all of the intricacies of this 'case' public in the UK and in Gibraltar*** *as it involves a contentious issue, being about* ***working visas for foreigners****.*"

"I have asked for an indication as to what the Complainant, your wife, wants as her complaint covers anything and everything ***she thinks she can use to thieve from my company****…"*

"Once we have been through the court system and a judgment has been made, the case outline will remain in the public domain, but ***I will be sending a copy of the outline to numerous Gibraltarian news outlets, Mosques, Churches, Schools and nurseries, Gibraltarian company HR departments, and of course the news outlets in the UK such as GBNews (Patrick Christys and Bev Turner), Telegraph, Daily Mail, and numerous others. Mass information is only a 'click' away these days … As your name will be included, I think it is only fair that you are prewarned.***"

"*If you did know about your wife's exploits and* ***feel you would like to continue on with this case, best of luck****.*"

The Letter also stated that the author "*shall be asking the court for costs*" against the Claimant on the grounds that the Claimant had allegedly acted unreasonably or vexatiously.

8. Unite the Union on behalf of the Claimant wrote to the Respondent on 5 March 2025 requesting that no further correspondence with such "*pejorative language*" be sent to the Claimant. Ms Deborah Coombe, director of the Respondent, replied only that Unite the Union should not use her email address.

9. Unite the Union also wrote to the Director of Employment on 5 March 2025 enclosing a copy of the Letter. The Director forwarded the Letter to the Tribunal.

10. On 1 April 2025, I issued an Order striking out the Response under Rule 36(1)(b) of the Employment Tribunal (Constitution and Procedure) Rules 2016 (**the Rules**) on the grounds that the manner in which the proceedings had been conducted by or on behalf of the Respondent had been scandalous, unreasonable and vexatious, stating:

"Having considered the undated and unsigned letter sent by or on behalf of the Respondent to the Claimant's husband received in February 2025, I find such letter to be offensive and threatening, the only purpose of which is to cause the Claimant upset and distress and to harass and frighten her into withdrawing … the Claim."

11. The Order provided for the whole of Response to be struck out on 22 April 2025 unless, before 22 April 2025**,** the Respondent made representations, either in writing and/or, if requested, at a Hearing explaining why the Response should not be struck out.

12. Later on 1 April 2025, Ms Coombe sent an email to the Tribunal stating (emphasis added):

"***I, Deborah Coombe, and my business Oxford Learning Ltd, have had nothing to do with any scandalous, unreasonable, offensive, threatening, or vexatious conduct*** *pertaining to our response to Claim No. 40/2024. I registered my response with the court in January 2025 and this should not be 'struck out' because of* ***actions that were maybe taken by an unknown third party or the claimant herself****.*

Any unsigned and undated letters *received by the claimant's husband of whom I have no information on and have never met,* ***could only have been sent by an anonymous third party who is clearly operating for the claimant as it is the respondent's side that is being penalized****.*

There is no reason to believe that any anonymous notes to the claimant's husband have anything to do with the Respondent's side of this Claim No. 40/2024 and to punish our side for this under the information that has been presented is unfair when the facts surrounding this matter are unsubstantiated."

13. On 30 April 2025, the Claimant filed an Application for disclosure by DHL seeking confirmation of the identity of the sender of the Letter. The Application was accompanied by Witness Statements from the Claimant and her husband, Mr Kirk. In the Claimant's Witness Statement, she stated that when the DHL courier arrived at her home to deliver the Letter to her husband, the courier showed her the name of the sender of the Letter, namely, the Respondent. In Mr Kirk's Witness Statement, he stated that after he picked up the Letter from DHL on 19 February 2025 and read it, he returned to the DHL offices to request the sender's identity. He was told by the DHL representatives that they would need to contact the sender to obtain permission for their identity to be disclosed. Later that day, DHL telephoned Mr Kirk to inform him that they had contacted the sender, who had refused permission for their identity to be disclosed.

14. In his Witness Statement, Mr Kirk further stated that, following my strike out Order dated 1 April 2025, he had reiterated his request to DHL by email dated 4 April 2025. DHL responded by email dated 4 April 2025 that disclosure of the identity of the sender of the Letter could only be made if the "court" requested it.

15. On 1 May 2025, the Respondent filed:

- a "*Formal Rebuttal Statement*";
- "*Preliminary Submissions on the Irrelevance of the Disputed Letter and the Grounds for Dismissal*";
- "*Submissions on the Implausibility of the Respondent's Involvement in the Anonymous Letter*";
- a "*Memorandum of Objection to Third Party Disclosure Order Sought under Norwich Pharmacal Principles*";
- the Claimant's interpretation of 3 Court decisions on *the* Employment (Bullying at Work) Act 2014; and a "*costs and professional negligence application*".

Much of the content of these documents has no relevance to the strike out Order. In my finding, the limited content which does have a bearing on the strike out Order is set out below (emphasis added throughout).

"*Formal Rebuttal Statement*"

"*The Chairperson, without evidence, assumed the 'Letter' was sent by the Respondent, and with no proof,* ***accused her of writing it and of being 'offensive' and 'threatening'****, and threatened her case against* ***a clearly vexatious filing***."

*"**The Respondent stated that she did not write the letter and did not know who did.**"*

"*Preliminary Submissions on the Irrelevance of the Disputed Letter and the Grounds for Dismissal*"

"***If it is determined that Ms. Zaki authored the letter herself and presented it to the Tribunal with the intent to mislead, such conduct constitutes a manipulation of the judicial process. The Tribunal should view this as further evidence of the Claimant's bad faith.**"*

*"**If it is determined that the letter originated from an unnamed individual purporting to be affiliated with Oxford Learning Ltd, this does not constitute incontrovertible evidence that the document was authorised by, written on behalf of, or known to the Respondent.** The mere invocation of the Respondent's name by a third party …."*

"Even if the Tribunal were to proceed on the assumption most favourable to the Claimant, namely, that someone associated with Oxford Learning Ltd wrote the letter, this does not establish that the Respondent acted in a "scandalous, unreasonable or vexatious" manner in the conduct of these proceedings. The burden of proof lies squarely on the Claimant, and it has not been discharged."

"*Submissions on the Implausibility of the Respondent's Involvement in the Anonymous Letter*"

The Respondent devotes 2 pages to "***the implausibility of the claim that the Respondent, Deborah Coombe, authored or arranged for the delivery of the anonymous DHL letter of 19 February 2025.*** *It is respectfully submitted that* ***this claim is illogical, factually unsupported, psychologically inconsistent with rational human behaviour, and contradicted by the Claimant's own shifting narrative*****.**"

The Submissions also refer to: "*…**the anonymous and vindictive tone of the letter** …*"; and *"… a **document with such hostile and informal character**…*".

"*Costs and professional negligence application*"

"*This is an application for a costs order and for the Tribunal to record a finding of professional negligence and procedural abuse on the part of the Claimant's representative."*

"*The conduct of the Claimant's representative has resulted in emotional distress, professional disruption, and substantial wasted time and resources for the Respondent.*"

"*The Respondent estimates that she has spent at least 20 hours defending herself and Oxford Learning Ltd in this matter*" and makes a costs claim for 20 hours X £300, totalling £6,000.

"*The Respondent respectfully seeks: … 2. A formal finding that the Claimant's representative has acted negligently and unreasonably. 3. That the Tribunal issue a warning or recommendation that this case be reviewed by a regulatory or oversight body (e.., Law Council or har Standards Board…*".

16. On 6 May 2025, the Tribunal issued a summons and disclosure Order to DHL.

17. On 7 May 2025, DHL disclosed copy email correspondence dated 18 and 19 February 2025 between a Mr Stephen Bolanos, DMM/Interim Manager of the Respondent, and DHL in which Mr Bolanos made the order for collection of the Letter from the Respondent's premises and delivery to Mr Kirk at his home address; and in which he told DHL, apparently following a telephone call on 19 February 2025: "*There is no need to tell him who it has come from as it is in the documents, this is what the Director has told me, thanks.*"

18. The following day, 8 May 2025, Ms Coombe wrote a letter to the Tribunal:

"*In light of the newly submitted DHL Express Gibraltar information, the sequence of events concerning the errant note has now been clarified.* ***I wish to confirm that no false statements have ever been submitted to the Tribunal.***
I acknowledge that it was an error in judgment to use my office to send correspondence bearing a name I did not recognise or containing contents with which I was not familiar. …
The individual who authored the note in question does not, and has never, worked for Oxford Learning Limited.*"*

19. Also on 8 May 2025, the Claimant filed a Skeleton Argument for the 14 May 2025 Hearing in respect of the Claimant's case that the Response should be struck out because of Ms Coombe's conduct, that a fair hearing was no longer possible due to the impact on the Claimant's ability to give evidence.

20. The Skeleton Argument was supported by a Witness Statement by the Claimant, in which she stated, inter alia, that receipt of the Letter had left her "*feeling overwhelmingly intimidated and afraid*". She continued: the Letter "*… appears to imply that I am somehow being disloyal/unfaithful to him [Mr Kirk]. This is not the case. However, I am worried about any further steps the Respondent may take to cause problems in my marriage as the proceedings continue.*

7. What makes me particularly anxious and worries me deeply is that the Respondent would be capable of publicising information relevant to this case to Government Departments, news agencies, schools and religious establishments (particularly, "Mosques"). As a mother and devout Muslim, this troubles me greatly.

8. Further, I felt that the letter specifically targeted my baby. The Respondent's accusation that my new family was involved in "thievery" directly implicated my innocent baby, and the threat to notify schools and nurseries made me fear for my baby's safety and future reputation.

9. Due to the menacing tone of the letter, the thought of having to appear in a Tribunal with the Respondent and give evidence … is one which causes me great anxiety. The Respondent knows where I live and knows about my family. The idea of continuing with the litigation and being questioned by the Respondent worries me, as I do not believe I would be able to ignore the threats previously made. I am concerned that this could impact upon my ability to give evidence in the same manner I would have had the threats contained in the Letter not been made."

21. Later on 8 May 2025, the Respondent filed its "Response to the Claimant's Skeleton Argument in relation to Strike Out Hearing Listed for 14th May 2025 @1000HRS". Relevant extracts include:-

- "*The Claimant's assertion that the tone and content of the letter dated 19th February 2025 are "vexatious" or "unpalatable" misconstrues both the intent and the legal character of the statements contained therein. While the excerpts quoted by the Claimant are direct and firm in tone, they do not constitute threats, harassment, or vexation when viewed in context. Rather, they reflect the expression of truth and a justified concern with matters of public interest and legal accountability.*"

- "***a. Regarding the statement:***
"*Unfortunately, your wife is dragging you and your family into something you will not be able to get out of if it goes on for much longer…"*

  This is not a threat but a candid observation about the potential consequences of the Claimant's ongoing actions. The statement merely highlights a foreseeable outcome

should the situation remain unresolved. The warning is neither unlawful nor intimidating; it is a sincere appeal for reconsideration and accountability, framed within a legal context. The reference to "thievery" refers to an ongoing dispute over the alleged misappropriation of resources—an allegation which the sender is entitled to state and pursue as part of a legal grievance. The expression of intent to make aspects of the case public is not coercive, but rather a reflection of the right to lawful disclosure, especially where issues of potential public concern—such as visa fraud or employment misconduct—are involved."

- "***b. Regarding the statement:***
  "...anything and everything she thinks she can use to thieve from my company…"

  While the term "thieve" is undoubtedly stark, it must be interpreted within the context of an adversarial proceeding where strong language is sometimes employed to describe contested actions. The sender is entitled to express their view, especially when the statement refers to a belief concerning the nature and scope of the Claimant's allegations. It is not a personal attack, but a characterization of conduct as perceived by the sender, based on available evidence and within the bounds of free speech."

- "***c. Regarding the statement:***
  "...sending a copy of the outline to numerous Gibraltarian news outlets, Mosques, Churches, Schools and nurseries, Gibraltarian company HR departments…"

  This reflects an intention to make a matter of public interest known to relevant bodies. There is no implied threat in this passage—only a declaration that a lawfully obtained and publicly available judgment or case outline may be shared with entities potentially affected by the underlying issues. Transparency in legal matters—particularly those touching on issues such as workplace integrity, visa policy, and organisational conduct—is a legitimate concern. The proposed disclosures are subject to the principles of lawful communication and public interest reporting."

- "***Conclusion***
  The contents of the letter are undeniably firm in tone, but this does not render them vexatious or unpalatable in the legal sense."

- "***Points 3 / 4: The note in question was written by my partner****, who acted out of frustration at the way I have been treated. Regrettably, he responded without careful consideration.* ***He is a Portuguese national residing in Portugal. He has never visited Gibraltar*** *and speaks very limited English. However, he is proficient with online tools such as ChatGPT and Google Translate, which he used to compose the letter*."

  "*… I was contacted and asked if I wanted the delivery people to give out the information as to where the post was from. I said not to bother as it would say inside the envelope. This shows even further that I did not know what was in the envelope at the time*."

  "… ***<u>Please understand this:</u>***

"The individual who imprudently composed the note in question has never visited Gibraltar and has no acquaintances or contacts in the area. … He has never set foot in Gibraltar and has no connections here …"

- Unite the Union "*engaging in unwarranted accusations and exhibiting a pattern of confrontational and discourteous behaviour*", which appears to be based on Unite the Union's entirely proper request of 5 March 2025 that the Respondent not send any further correspondence like the Letter.

- "***Manipulative Language and Overembellishment***
  … I have personally observed the Claimant on three separate occasions—in Ocean Village and twice in Gibraltar's town centre. On each occasion, she appeared calm, confident, and notably unafraid. She made direct eye contact with me, smirked, and lifted her phone camera toward me in what appeared to be an intentional act of provocation or intimidation …"

22. The Preliminary Hearing of the Respondent's application was listed for 14 May 2025. The Tribunal had the benefit of a full Hearing bundle helpfully provided by Hassans for the Claimant. The Claimant did not attend the Hearing, but was represented by Ms Lima of Hassans. Neither Ms Coombe nor any other representative for the Respondent attended the Hearing. No communication was received by the Tribunal prior to the Hearing advising of the Respondent's non-attendance. On the morning of the Hearing, the Secretary attempted to telephone Ms Coombe, but she did not answer. Given that I was satisfied that Ms Coombe had received ample notice and was fully aware of the Hearing (from for example, the title of the "Response to the Claimant's Skeleton Argument in relation to Strike Out Hearing Listed for 14th May 2025 @1000HRS"), I directed that the Hearing would continue in the absence of the Respondent.

23. Pursuant to the summons and disclosure Order dated 6 May 2025, Mr Martin Forde of DHL attended the Hearing on 14 May 2025 and responded to questions from me and Ms Lima for the Claimant, including putting into evidence the copy email evidence that DHL had submitted on 7 May 2025 and confirming that the instructions to deliver the Letter to the Claimant's husband had been issued by the Respondent.

<u>The Law</u>

1. Rule 36 provides:
   "(1) At any stage of the proceedings, the Tribunal may, either on its own initiative or on the application of a party, strike out all or part of a claim or response on any of the following grounds– … (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…".

2. The applicable test is set out in <u>*Bolch-v-Chipman* UKEAT/1149/02</u>:
   a. the Tribunal must find that the party has behaved scandalously, unreasonably or vexatiously in conducting proceedings;

b. the Tribunal must consider whether a fair trial is possible because, unless there are exceptional circumstances, strike out is not regarded as a punishment; rather, it is to protect the other party (and the integrity of the judicial system) from such behaviour which results in it no longer being possible to do justice;
c. even if a fair trial cannot be achieved, the Tribunal will need to consider the proportionate remedy.

3. In *Force One Utilities-v-Hatfield* UKEAT/0048/08, the EAT held:
"*In our judgment, once a tribunal finds that a party is sufficiently intimidated as to affect his or her ability to give evidence without fear of consequences, the only proportionate response can be to bar the other party from participating in the trial.*"

4. 'Scandalous' in this context has 2 meanings: "*One is the misuse of the privilege of the legal process in order to vilify others; the other is giving gratuitous insult to the court in the course of such proces*s" (*Bennett v Southwark LBC* [2002] ICR 881 CA).

5. As per Bingham CJ in *Attorney General v Barker* [2000] 1 FLR 759, QBD (DC), 'vexatious' proceedings have "*little or no basis in law (or at least no discernible basis); that whatever the intention of the proceeding may be, its effect is to subject the [other party] to inconvenience, harassment and expense out of all proportion to any gain likely to accrue …; and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process.*"

6. For conduct to be considered 'unreasonable', it must either constitute a deliberate and persistent disregard of required procedural steps, or have made a fair trial impossible (*Blockbuster Entertainment Ltd v James* [2006] IRLR 630 CA).

Findings

Ms Coombe chose not to attend the 14 May 2025 Hearing and so did not present the Respondent's case or submit to cross-examination on oath. This has inevitably raised questions for me about Ms Coombe's credibility and impacted the weight which I have given to the Respondent's case and Ms Coombe's evidence presented in writing only.

The Letter

1. Ms Coombe herself admitted in her 1 May 2025 "*Submissions on the Implausibility of the Respondent's Involvement in the Anonymous Letter*" that the Letter was of a "*hostile*" character and had a "*vindictive tone*".

2. I find that the contents of the Letter in particular as set out below are not only hostile and vindictive, but are deeply offensive and threatening, deliberately intended to upset and distress the Claimant and to frighten and harass her into withdrawing her Tribunal Claim, notwithstanding that the wording has been crafted disingenuously to allow for the Respondent to argue alternative interpretations, as it subsequently did:-

"*you don't know what your wife is doing behind your back whilst sneaking about and meeting male representatives she is somehow manipulating to act in her favour. … one may ask how she is able to do this, or maybe not.*"

"*your wife is dragging you and your family into something you will not be able to get out of if it goes on for much longer, so I am giving you the option of either stopping it, or joining your wife and new family in their thievery.*"

"*I intend to make all of the intricacies of this 'case' public in the UK and in Gibraltar as it involves a contentious issue, being about working visas for foreigners.*"

"*she thinks she can use to thieve from my company*"

"I will be sending a copy of the outline to numerous Gibraltarian news outlets, Mosques, Churches, Schools and nurseries, Gibraltarian company HR departments … and numerous others. … Mass information is only a 'click' away these days"

"*if you did know about your wife's exploits"*

"if you … feel you would like to continue on with this case, best of luck."

3. I do not understand upon what Ms Coombe's submission that these passages from the Letter are an "*expression of truth and a justified concern with matters of public interest and legal accountability*" is based. On their face, these passages instead constitute offensive personal insinuations and attacks on the Claimant's integrity (including of unfaithfulness and theft) and overt and veiled threats of reputational damage levelled at the Claimant and her family. The threat to send a copy of the "*case outline*" to inter alia, Mosques and nurseries is particularly nauseating. Although I do not know what the Respondent means by "case outline" (the only Tribunal documents in the public domain are Judgments and Decisions on the Tribunal Register), the intent and malice behind this very personally crafted threat is self-evident, given that the Claimant is a Muslim and has a small child of nursery age.

4. The Letter also makes an insinuation about the Claimant's visa status and the Respondent developed this in its 8 May 2025 Response to the Claimant's Skeleton Argument to an accusation of "*visa fraud*". It should go without saying that these kinds of nasty insinuations are offensive and threatening, the only imaginable purpose of which is to cause the recipient upset and distress. For the record, on this subject, on the documents which I have reviewed to date in respect of this Claim, the only individual who appears to have tried to manipulate the work permit system for non-entitled workers is Ms Coombe herself: as I have no doubt she was aware, applications for work permits and renewals are the responsibility of and made by employers (not employees). The fact that the Claimant would have been on statutory maternity leave for the following work permit year has no bearing on the application for the permit. Ms Coombe's argument (one of them) that the Respondent did not renew the Claimant's work permit because the Claimant would be on maternity leave is therefore irrational, and the allegation that the Claimant was engaged in some kind of impropriety in respect of her work

permit is nonsensical. The reason that the Claimant's work permit was not renewed was because Ms Coombe did not make the application.

5. Taking into account all of these matters detailed above, I find that the contents of the Letter (in particular, the extracts quoted above) on their face are malicious, offensive and threatening and there is not a doubt in my mind that the Letter's purpose was not legitimate communication about the Claim or a desire to exercise the right to free speech or to present a defence to the Claim, but a reprehensible, deliberate attempt to frighten the Claimant into abandoning the proceedings, constituting an abuse of the Tribunal's processes and making a fair trial impossible.

The Respondent's conduct following the 1 April 2025 strike out Order

6. As detailed above, Ms Coombe initially denied all knowledge of the Letter: on 1 April 2025, the date of the strike out Order, she asserted that the Letter had been sent by an *"unknown third party*" or even the Claimant herself or someone acting for her, as the Letter "*could only have been sent by an anonymous third party who is clearly operating for the claimant as it is the respondent's side that is being penalized*".

7. Once this position had been taken, the Respondent maintained it and, following the Claimant's 30 April 2025 Application for disclosure by DHL, on 1 May 2025, the Respondent filed its suite of documents in support of this position, including repeating its speculation that the Claimant herself had authored the Letter, its submissions on "*the implausibility of the claim that the Respondent, Deborah Coombe, authored or arranged for the delivery of the anonymous DHL letter of 19 February 2025. It is respectfully submitted that this claim is illogical, factually unsupported, psychologically inconsistent with rational human behaviour, and contradicted by the Claimant's own shifting narrative*" and Ms Coombe's unequivocal statement that she "*did not write the letter and did not know who did*".

8. On 7 May 2025, this position was categorically undermined by the email evidence disclosed by DHL: the email correspondence on 18–19 February 2025 confirmed that the delivery instructions for the Letter originated from the Respondent's office, that Ms Coombe had given instructions for its delivery and that she had told DHL not to disclose the Respondent's identity as the sender.

9. The following day, 8 May 2025, in stark contradiction of her previous statements (including that she knew nothing of the Letter or its delivery and that it must have been sent by an anonymous third party or the Claimant herself), Ms Coombe wrote to the Tribunal:

   "*I wish to confirm that no false statements have ever been submitted to the Tribunal.*
   … I acknowledge that it was an error in judgment to use my office to send correspondence bearing a name I did not recognise or containing contents with which I was not familiar. …

   The individual who authored the note in question does not, and has never, worked for Oxford Learning Limited."

10. Later on the same day, in the "*Response to the Claimant's Skeleton Argument in relation to Strike Out Hearing Listed for 14th May 2025 @1000HRS*", Ms Coombe admitted knowledge

of the Letter and accepted responsibility for arranging for its delivery. Further, she now claimed that the Letter had been authored by her partner (friend), a Portuguese national living in Portugal, not fluent in English, who had asked her to arrange the delivery. This new account by Ms Coombe, a shameless contradiction of her previous position that she "*did not write the letter and did not know who did*", is plainly ridiculous. There is no plausible reason for Ms Coombe's partner who does not work, and has never worked, for the Respondent to have any involvement in an Employment Tribunal Claim against the Respondent. It is not credible that this person would have copies of the Tribunal Claim Form and Response Form which were enclosed with the Letter.

11. Moreover, the Letter itself states that the Claimant's Claim: "*covers anything and everything she [the Claimant] thinks she can use to thieve from **my** company…*" (emphasis added). Further, it refers to the author ("*I*") seeing the Claimant and her husband walking through Ocean Village (which is in Gibraltar) and the Claimant holding up her phone to the author of the Letter in a provocatory manner. But Ms Coombe had also taken pains to emphasise that her partner had never been to Gibraltar: "… *Please understand this: "The individual who imprudently composed the note in question has never visited Gibraltar … He has never set foot in Gibraltar and has no connections here who might have supplied such material.*" It is self-evidently absurd to submit that an individual who Ms Coombe says has never visited Gibraltar, and who was not employed by the Respondent, authored a letter that refers to the author seeing the Claimant in Gibraltar and "my" company; and contains specific references to the Claimant personally and her family, the Claimant's Employment Tribunal Claim, the Gibraltar and UK press and Gibraltar institutions; and all of this written in the first person ("*I*"). In addition, elsewhere in the Response to the Claimant's Skeleton Argument, Ms Coombe more or less duplicates the opening of the Letter, but now writing in the first person: "*I have personally observed the Claimant on three separate occasions—in Ocean Village …. She made direct eye contact with me, smirked, and lifted her phone camera toward me in what appeared to be an intentional act of provocation or intimidation**".***

12. In my finding, bearing in mind all of the above considerations, the only person who could possibly have authored the Letter was Ms Coombe herself.

13. I further find that, from the moment that Ms Coombe received the strike out Order and realised that the Letter had not had the apparently intended effect of putting pressure on the Claimant to discontinue her Claim against the Respondent, but rather had been exposed to third parties and caused the Response to be struck out, instead of owning up and apologising for her conduct, Ms Coombe embarked upon a sustained and deliberate campaign to mislead the Tribunal by a bombardment of contradictory, dishonest and misleading statements and insinuations, including again accusing the Claimant of writing the Letter and adding further threats against the Claimant of publicity and costs, as well as accusing the Claimant's advisers of professional negligence and procedural abuse. These actions by Ms Coombe have served only to expose her dishonest and bullying conduct and lack of respect in relation to these proceedings.

Conclusions

14. It is therefore in my finding indisputable that the contents of the Letter, including the express and implied threats against the Claimant and her family, including her baby, and the conduct of the Tribunal proceedings by the Respondent following the 1 April 2025 strike out Order, meet the Rule 36(1)(b) test that the manner in which the proceedings have been conducted by or on behalf of the Respondent has been scandalous, unreasonable and vexatious, intended to vilify the Claimant and displaying an utter lack of respect for the Tribunal proceedings, and to put the Claimant in fear of the consequences of continuing with her Claim and accordingly to obstruct justice.

15. I also find that the conduct directly relates to the proceedings, including because the Letter directly referenced the proceedings (the Claim Form and Response Form were even enclosed with it) and to the Claimant "*stopping*" them. Further, I find that the Respondent's conduct has sufficiently intimidated the Claimant so as to affect her ability to give evidence without fear of consequences, to the extent that it would not be possible to hold a fair hearing of the Claim. The inability of the Claimant to pursue her Claim without giving evidence would put her at a significant disadvantage and the Respondent at a significant advantage, caused by the Respondent's own reprehensible conduct. In addition, Ms Coombe's actions after the strike out Order evidence that she is prepared to mislead the Tribunal and I have no doubt that she would have no hesitation in misleading the Tribunal further in these proceedings if permitted to continue. This also would not result in a fair trial.

16. I am conscious of the principle that strike out should not be a punishment, unless there are what is described in ***Bolch-v-Chipman*** as "*exceptional circumstances*", but only imposed for the protection of the other party (and the integrity of the judicial system) from behaviour which results in it no longer being possible to do justice. I find that this is such a case, not least because Ms Coombe has at no point taken responsibility for her conduct, but rather has continued to deny her culpability and to attempt to mislead the Tribunal even in the face of clear evidence to the contrary, and to make further insinuations about and implied threats to the Claimant's reputation. In these circumstances, there is in my finding no alternative proportionate remedy available.

17. The whole of the Respondent's Response is therefore struck out under Rule 36(1)(b) of the Employment Tribunal (Constitution and Procedure) Rules 2016 on the grounds that the manner in which the Respondent has conducted the proceedings has been scandalous, unreasonable and vexatious, and the effect shall be as if no Response had been presented.

18. The next step is for me to decide whether on the available material (which may include further information I may require) a determination can properly be made of the Claim, or part of it. To the extent that a determination can be made, I shall issue a Judgment accordingly. Otherwise, a Hearing shall be fixed. The Respondent will be entitled to notice of any such Hearing and decisions of the Tribunal but shall only be entitled to participate in any Hearing to the extent permitted by me.

Costs

The Hearing bundle of documents for the 14 May 2025 Hearing prepared by the Claimant included a draft Order that the whole of the Respondent's Response be struck out and that the Claimant's costs of, and occasioned by, the Claimant's Application for disclosure by DHL and the strike out Order be paid by the Respondent, such costs to be assessed on an indemnity basis if not agreed. However, the bundle did not include an application for the costs order and this was only made by Ms Lima for the Claimant orally at the 14 May 2025 Hearing.

The Respondent made no submissions in respect of this costs application by the Claimant in any of its documents submitted prior to the 14 May 2025 Hearing and as noted above the Respondent failed to attend the Hearing.

Rule 62(1) provides:
"A Tribunal may on its own initiative or on application make a costs order or a preparation time order, where it considers that– (a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted."

Rule 63(2) provides:
"No costs order or preparation time order may be made unless the paying party has had a reasonable opportunity to make representations (in writing, at a hearing, or both as the Tribunal may order)."

Rule 64 provides:
"(1) A costs order may–
(a) order the paying party to pay the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party;
(b) order the paying party to pay the receiving party the whole or a specified part of the costs of the receiving party, with the amount to be paid being determined by way of detailed assessment…";
… (d) if the paying party and the receiving party agree as to the amount payable, be made in that amount.
(2) The amount of a costs order under subrules (1)(b) to (d) may exceed £20,000.

Rule 69 provides:
"In deciding whether to make a costs, preparation time or wasted costs order, and if so in what amount, the Tribunal may have regard to the paying party's (or, where a wasted costs order is made, the representative's) ability to pay."

Costs Decision

This is clearly a case where the Tribunal has jurisdiction to make a costs order under Rule 62(1) given that I have found above that the Respondent has acted scandalously, unreasonably and vexatiously in the way that the proceedings have been conducted. In this context, this finding is reinforced by the issue of the Respondent's "*costs and professional negligence application*" against "*the Claimant's representative*" dated 1 May 2025, in which the Respondent had the audacity to

seek a £6,000 costs payment including for "*drafting legal responses and applications now necessitated by improper conduct*" and went so far as to request that the Tribunal issue a recommendation that the representative be referred to the "*Law Council or Bar Standards Board*". In my finding, this is yet another example of the Respondent's shameless conduct aimed at frightening the Claimant and attempting to manipulate the Claimant's representative.

For the record, in my finding, the Claimant's representatives have conducted these proceedings before me with utmost professionalism, competence, skill, and decency, made all the more difficult by the Respondent's conduct.

Unfortunately however, the Claimant's application for the costs order was only made orally at the 14 May 2025 Hearing (which the Respondent did not attend) and I do not believe that the application has been served on the Respondent (and so the Respondent has not had a reasonable opportunity to make representations in relation to the application). In addition, the Claimant's application made at the Hearing did not detail what kind of costs order was being applied for under Rule 64 or the amount. For these reasons, I am not minded to make the costs order sought by the Claimant.

Gabrielle O'Hagan

Gabrielle O'Hagan, Chairperson
31 July 2025