



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms S Ryan

**Respondent:** Essex Partnership University NHS Foundation Trust (EPUT)

**Heard at:** East London Hearing Centre (by Cloud Video Platform)

**On:** 2 August 2021

**Before:** Employment Judge B Elgot

**Representation:**  
**For the Claimant:** In person  
**For the Respondent:** Mr A Webster, Counsel

## DECISION ON APPLICATION FOR COSTS

(Rules 74-78 Employment Tribunals (Constitution and Rules of Procedure Regulations 2013))

1. The Respondent's application under Rule 76 for a costs order against the Claimant is REFUSED and no payment is ordered.
2. The Respondent's application is set out in a letter sent by email dated 23 August 2021 and asks for part of the costs incurred by it in preparing for and attending the preliminary hearing on 2 August 2021 at which it instructed counsel. The application for costs is limited to the amount of counsel's fees and other costs incurred subsequent to a costs warning sent to the Claimant on 27 July 2021.
3. The costs order is pursued on the ground that the Claimant's claim for damages for breach of contract had no reasonable prospect of success, that she was warned of this position but unreasonably continued to pursue her claim at the Preliminary Hearing. The Hearing was listed to consider whether her claim should be struck out because it had been brought outside the time limits for submitting such a claim and/or whether it should be struck out or a deposit order made because the claim had little or no reasonable prospect of success.
4. My judgment sent to the parties on 5 August 2021 strikes out and dismisses the Claimant's claim because it was brought out of time by reference to the relevant time limit in Article 7 Employment Tribunals' Extension of Jurisdiction (England and

Wales) 1994. I have refused the Claimant's application for a reconsideration of this judgment.

5. It was not part of my judgment that the claim had little or no reasonable prospect of success. It was unnecessary to make findings in this respect. I did however comment in open tribunal that I considered the merits of the Claim to be 'very weak and likely to be struck out'. I did not, looking at my contemporaneous note, express strike out on the merits to be inevitable nor use the words 'extremely weak'.
6. The Claimant's response to the costs application is contained within part of her email requesting reconsideration which is also dated 6 August 2021.
7. I am satisfied that I have sufficient information to decide this application for costs by reference to the written representations and without the need for a further hearing.
8. My decision not to grant the Respondent's application for part of their costs in relation to the 2 August Preliminary Hearing is made for the following reasons:-
  - (i) The Claimant's submissions in relation to the missed time limits were not without reasonable prospect of success or misconceived. Her personal and medical evidence was required in order for me to decide whether it was practicable for her to lodge her complaint in time. She indeed did persuade me that the evidence showed that it was not practicable to comply with the primary time limit but I was not convinced that she thereafter lodged her claim within a further reasonable period. She did not act unreasonably in pursuing her arguments in relation to time limits.
  - (ii) Secondly, although I observed that the substantive case was very weak there were contentions made by the Claimant regarding the terms of her renewed contract, the incorporation of certain EPUT policies in to her contract of employment, and some alleged verbal variation to her contract and/or misrepresentation which in fairness needed to be fully ventilated before I made a strike out or deposit order on the basis of the merits of her claim. In fact it was unnecessary to hear all of that evidence because the case was struck out because it was brought out of time. It was not unreasonable for her to decline to withdraw after the Respondent's cost warning on 29 July 2021.
  - (iii) There have, for the avoidance of doubt, been no other unreasonable actions of the Claimant in the bringing or conducting of these proceedings.

**Employment Judge B Elgot  
Date: 12 October 2021**