



# EMPLOYMENT TRIBUNALS

**Claimant** Mrs Priyanka Oliver  
**Respondent** Surrey and Sussex NHS Healthcare Trust

## JUDGMENT ON COSTS

There is no order for costs.

### REASONS

1. This case was struck out by order made on 27 November 2023 following the claimant's second failure to attend a hearing.
2. The respondent then applied for a costs order, on 22 December 2023. Due to an oversight, this was not referred to me at the time. The respondent's solicitors followed up the application on 25 October 2024, but again it was not passed on. Consequently, it has only now come to my attention.
3. The claimant, however, did receive the application and made a response on 29 December 2023, citing confusion over the hearing dates and lack of communication.
4. As noted in the Order which struck out the claim, I considered whether such an order was proportionate and that an alternative would be to adjourn the hearing for the third time, "potentially on terms that the claimant pays the wasted costs of this hearing".
5. Ultimately I decided that the claimant had no real intention of pursuing the claim and that a further hearing would be unlikely to achieve anything.
6. It follows that costs were considered in general at the previous hearing. The options under consideration were a strike out order or that the claim proceed, with an award of costs. What is now being sought is a much more onerous outcome, that having had the claim struck out, costs should be awarded in addition.
7. Rule 74 of the Employment Tribunal Rules of Procedure 2024 provides that:  
“(1) The Tribunal may make a costs order ... on the application of a party ..

- (2) The Tribunal must consider making a costs order ... where it considers that –
- a) a party ... has acted vexatiously, abusively, disruptively or otherwise unreasonably in either bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted, or
  - b) any claim or response had no reasonable prospect of success, or
  - c) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which that hearing begins.
8. The word “may” in the opening line indicates that the tribunal has a discretion as to whether costs should be awarded, even when one of these relevant tests is met.
9. In fact, no finding was made that the claimant had acted vexatiously etc., or that the claim had no reasonable prospects of success, and there was no adjournment. Arguably, failing to attend the hearing was unreasonable conduct of proceedings, but the claimant has already suffered the severe consequences of that failure in having a strike out order made against her.
10. In those circumstances, where the respondent has had the relative advantage of proceedings coming to an end at an early stage, I do not consider, in the exercise of my discretion, that any award of costs would be justified.

Employment Judge Fowell

Date 30 January 2025