EMPLOYMENT TRIBUNALS

Claimant: Ms M Woods

Respondent: Allianz Management Services Limited

Heard at: Cambridge Employment Tribunal (in public; by CVP)

On: 7 August 2025

Heard by: Employment Judge Hutchings (sitting alone)

Representation

Claimant: in person
Respondent: Ms Greenley, counsel

RESERVED JUDGMENT ON COSTS

The respondent's application for costs is refused.

REASONS

Introduction

1. The claimant was employed by the respondent, a UK based general insurance company, from 7 September 2007 to 19 April 2023; at the time of the matters about which she complains her role was a Deputy Team Leader. Early conciliation started on 6 July 2023 and an ACAS certificate was issued on 17 August 2023.

2. By ET1 claim form dated 13 October 2023, the claimant made the following claims against respondent:

   2.1. Constructive unfair dismissal (s95(1)(c) of the Employment Rights Act 1996);

2.2. Indirect age discrimination 'by association' (s5 and s19/s19A of the Equality Act 2010); and

2.3. Indirect disability discrimination 'by association' (s6 and s19/s19A of the Equality Act 2010).

3. By ET3 and Grounds of Resistance dated 7 February 2024 the respondent contests the claims. The respondent asserts that the Tribunal does not have jurisdiction to hear the claims as they were presented to the Tribunal out of time and, in any event, the claimant was not dismissed as she chose to resign. The respondent asserts that, at the time of the claimant's resignation, it had not breached an express term of her contract or the implied term of trust and confidence. The respondent does not accept that the claimant is a disabled person within the definition in section 6 of the Equality Act 2010 and, in any event, the respondent denies it discriminated against the claimant.

The costs application

4. This case came before me to consider the respondent's application dated 13 December 2024 that the claimant pay the respondent's costs in the sum of £20,000 on the basis:

4.1. The claimant acted unreasonably in both the bringing of the proceedings and her conduct (Rule 74(2)(a) Employment Tribunal Procedure Rules 2024 (the "Rules"); and/or

4.2. The claim had no reasonable prospect of success (Rule 74(2)(b)).

5. The application included the respondent's schedule of costs setting out: fee earner costs and disbursements (counsel's fees, photocopying and land registry charges). Attached to the skeleton arguments document prepared by Ms Greenley in support of the application is a schedule of "Approximated costs incurred".

6. Taking account of both sets of information, it was not clear how much time was spent by fee earners on the tasks for which the respondent is seeking to recover their costs. For example, the schedule the respondent provided with the application recorded 18.9 hours of partner time and 30 hours of Associate 2 time but it was not clear to me how this time was spent. While a detailed assessment is not required, given the sum being claimed from a non-represented party, I considered it fair and just to have greater visability as to the allocation of time. Therefore, mindful that it is not a cumbersome task to provide more detail given the widespread use of electronic time recording, at the start of the hearing I ordered the respondent to provide a breakdown of how this time was spent by fee earner in these proceedings. An excel spreadsheet containing this information was submitted to the Tribunal during the first break.

Documents and procedure

7. I had the benefit of a 93 page hearing file, the respondent's written application dated 13 December 2024, Ms Greenley's skeleton argument for the respondent and the respondent's spreadsheet of costs. As the claimant had not provided information about her financial circumstances (which is no criticism, understandably, as a non-represented party, she may not have

been aware she should do so and the Tribunal had not ordered her to do so prior to the hearing), I heard evidence on oath from the claimant, with Ms Greenley questioning the claimant about her income and outgoings.

8. Mindful of Rule 3 of the Employment Tribunal Procedure Rules 2024 (the "Rules"), and the overriding objective of the Employment Tribunal to ensure parties are on an equal footing, which is particularly important when one party is not represented, as here, I spent some time explaining to the claimant the procedure the hearing would follow. After the claimant's financial evidence, I heard oral submissions from Ms Greenley on behalf of the respondent and from the claimant in reply, having explained to the claimant that this was an opportunity for both parties to make a statement as to why the application should succeed or fail.

9. We took regular breaks, approximately every hour. We took a longer break at the start of the hearing to allow the claimant to gather information about her financial circumstances, to which I allowed her to refer when answering Ms Greenley's questions, and a longer break following Ms Greenley's oral submissions to the Tribunal to allow the claimant to gather her thoughts before replying.

Findings of fact

Chronology of proceedings

10. The following chronology was put to the Tribunal by the respondent. It was not challenged by the claimant. I find it accurately reflects the chronology of events leading to this hearing:

11. 7 February 2024: the respondent made an application for jurisdictional challenge (pursuant to Rule 27(1)(b)), seeking to have the claim dismissed on the basis that that the claimant brought the claim outside of the relevant statutory time limits. In the alternative, the respondent applied for the claim to be struck out (pursuant to Rule 37(1)(a)) on the grounds that it had no / little reasonable prospect of success, or otherwise for a deposit order of £1,000 (pursuant to Rule 39(1)).

12. 6 June 2025: a preliminary hearing took place before Employment Judge ("EJ") Forde (the "First Preliminary Hearing"), at which EJ Forde listed a second preliminary hearing for 5 September 2024 to:

    12.1. Determine whether the claim should be struck out due to time limits or merits, or whether it should otherwise be subject to a deposit order; and

    12.2. Consider the need for further directions (the "Second Preliminary Hearing").

13. At the First Preliminary Hearing EJ Forde offers no further explanation as to why he considered there was merit to the strike out/ deposit order application and the claimant conceded that the claim was brought out of time.

14. EJ Forde made case management orders dated 6 June 2025, which were sent to parties on 1 August 2025 (the "CMO"). The claimant was ordered:

14.1. By 19 July 2024 to send to the respondent's representative her GP notes and other evidence which supports her contention that she was suffering with ill-health at the time material to her presenting the claim (paragraph 8 CMO): and

14.2. By 12 July 2024 to provide a witness statement explaining why she did not to present her claim by the Tribunal's deadline.

15. The claimant did not provide these documents to the respondent by these dates.

16. On 29 July 2024 the respondent applied for an extension of time for preparing the hearing file for the Second Preliminary Hearing and for an unless order requiring the claimant to comply with the CMOs.

17. The respondent prepared the joint bundle for the Second Preliminary Hearing and sent an electronic copy to the claimant and to the Tribunal on 30 August 2024. The claimant accepts that she had still not complied with the orders at this point.

18. 3 September 2024: the Claimant emailed the Tribunal withdrawing her Claim. She wrote: "*Please be advised I am no longer pursuing the above Tribunal case. This is due to my mother's serious health issues over the last few months, and as a result, my own mental health's decline. I been unable to meet the Tribunal's timescales and apologise as such."*

19. The Second Preliminary Hearing was vacated and a withdrawal judgment issued by the Tribunal on 5 November 2024.

Settlement correspondence

20. During these proceedings parties engaged in without prejudice correspondence. Having read this correspondence, I make the following findings.

21. It is accepted by the claimant that on 2 February 2024 the respondent made a drop hands offer; this was not a monetary offer but an offer that if the claimant withdraws her claim the respondent will take no further action, The first offer was made before the respondent submitted its Grounds of Resistance. It is evident from the letter that the offer was made based on the respondent's assessment that the claim had no reasonable prospects of success. The respondent sets out in detail why the respondent considered the claim was likely to fail. At the end of this letter the respondent states:

"Should you continue with your claim, Allianz may ask the Employment Tribunal at the end of the proceedings (assuming that you lose the case) to award costs against you, on the basis that your claim had no chance of success. Even if you were to withdraw your claim now or at a later stage before the Tribunal had made any decision about the claim, Allianz could still ask the Employment Tribunal to award costs against you on the basis that it has incurred legal fees in defending the claim to date.

Our client has already incurred legal fees for the advice that relates to the merits of your claims. As it is required to provide a response to your claims by 8 February 2024, it will shortly be required to incur legal fees in preparing the defence to your Claims. As we have now clearly articulated to

you the multiple reasons why your Claims will fail and/or have no reasonable prospect of success, it should be abundantly clear to you that your Claims will not be successful."

22. I find this approach somewhat heavy handed (bearing in mind the claimant is not represented) and premature (bearing in mind the respondent had not yet filed its ET3 and Grounds of Resistance), particularly so in a forum where case law has clearly established that cost awards are the exception not the rule.

23. Separately the respondent offered to pay £500 towards the claimant obtaining independent legal advice.

24. 5 days later, on 7 February 2024 at the same time as submitting its Grounds of Resistance, the respondent made the strike out/deposit order application. I find that at this time a non-represented claimant had 5 days to digest the respondent's assessment of her claim, and its offer to make a payment to legal fees, without having had sight of the defence the respondent was bringing to the Tribunal, before finding herself on the receiving end of a strike out/ deposit order application.

25. The respondent repeated the offer to pay a contribution of £500 for the claimant to obtain legal advice on 19 June 2024, which was accepted by the claimant on 20 June 2024. During this time the claimant had caring responsibilities, about which I find the respondent had some knowledge as parties were engaged in discussions about working location and patterns prior to the end of the claimant's employment. The claimant also references caring responsibilities in her ET1.

26. In her submissions to the Tribunal the claimant told me that she obtained advice using the contribution provided by the respondent. She further told me that the advice she received did not agree with the respondent's assessment that her claim had no reasonable prospect of success. This was not challenged by the respondent in reply. I find it was the claimant's view subjectively that her claim had merit and that the advice she sought objectively told her there was some merit in her complaints.

27. During July 2024 the claimant and respondent exchanged settlement correspondence based around the respondent's settlement offer that it would not pursue costs if the claimant withdrew her claim. Resolution was not achieved and on 29 July 2024 the respondent applied for an unless order in relation to the CMOs (referenced above) with which the claimant had not complied, despite the respondent's offer to extend the deadlines.

28. The claimant accepts she did not comply with the CMOs, telling me in her closing statement that her mother had surgery in June 2024 and the claim went to the bottom of her priorities at this time which meant she did not communicate until October. The claimant further told me that the respondent was only willing to engage in conversations about her "going away". Having read the detailed correspondence from the respondent it is evident to me that the only settlement option the respondent was willing to entertain was a complete drop hands. In addition to an explanation as to why the respondent considered the claim without merit, it used the stick of a costs warning to seek to persuade the claimant to accept its assessment of the claim.

Financial circumstances

29. The claimant was a very credible witness, who gave open and frank evidence to the Tribunal about her financial circumstances. Having considered the information about the value of her assets and having taken account of her income and outgoings at this time, I find that the claimant is in a position to pay a cost award if so ordered.

Relevant law

30. The Tribunal has the power to order the payment of costs and witness expenses. The Employment Tribunal Procedure Rules 2024 (the "Rules") rule 73 sets out the nature of these orders:

Costs orders and preparation time orders
73.—*(1) A costs order is an order that the paying party make a payment to—*
(a)the receiving party in respect of the costs that the receiving party has incurred while represented by a legal representative or a lay representative, or
(b)another party or witness in respect of expenses incurred, or to be incurred, for the purpose of, or in connection with, an individual's attendance as a witness at a hearing.
(2) A preparation time order is an order that the paying party make a payment to the receiving party in respect of the receiving party's preparation time while not represented by a legal representative.
(3) A costs order under paragraph (1)(a) and a preparation time order may not both be made in favour of the same party in the same proceedings.
(4) The Tribunal may decide in the course of the proceedings that a party is entitled to either a costs order or a preparation time order but may defer its decision on the kind of order to make until a later stage in the proceedings.

31. Rule 74 sets out when a costs order or a preparation time order may be made:

When a costs order or a preparation time order may or must be made
74.—*(1) The Tribunal may make a costs order or a preparation time order (as appropriate) on its own initiative or on the application of a party or, in respect of a costs order under rule 73(1)(b), a witness who has attended or has been ordered to attend to give oral evidence at a hearing.*
(2) The Tribunal must consider making 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 of it, or the way that the proceedings, or part of it, have been conducted,
(b)any claim, response or reply 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.
(3) The Tribunal may also make a costs order or a preparation time order (as appropriate) on the application of a party where a party has been in breach of any order, rule or practice direction or where a hearing has been postponed or adjourned.
(4) Where in proceedings for unfair dismissal a final hearing is postponed or adjourned, the Tribunal must order the respondent to pay the costs incurred as a result of the postponement or adjournment if—

(a)the claimant has expressed a wish to be reinstated or re-engaged which has been communicated to the respondent not less than 7 days before the hearing, and
(b)the postponement or adjournment of that hearing has been caused by the respondent's failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the claimant was dismissed or of comparable or suitable employment.

32. The test for imposition of a costs order under rule 74 is a two-stage test:

    32.1. First, a Tribunal must ask itself whether a party's conduct falls within rule 74; and

    32.2. If so, it must go on to ask itself whether it is appropriate to exercise its discretion (including taking account of the conduct of the paying party (and their knowledge regarding the merits) in favour of awarding costs against that party.

33. Rule 74(2)(a) allows a Tribunal to make a costs order if it concludes the conduct of a claimant in bringing or pursuing the claim was unreasonable (a subjective assessment of the claimant's knowledge of the merits. Whether conduct is unreasonable is a matter of fact for the tribunal. According to the EAT in Dyer v Secretary of State for Employment EAT 183/83 (20 August 1983), "unreasonable" has its ordinary English meaning and is not to be interpreted as if it means something similar to "vexatious". It will often be the case, however, that a tribunal will find a party's conduct to be both vexatious and unreasonable. The Court of Appeal in Yerrakalva at paragraph 41 commented that it was important not to lose sight of the totality of the circumstances. A Tribunal must also consider whether it was thereafter properly pursued (Npower Yorkshire Ltd v Daly UKEAT/0842/04 (23 March 2005, unreported)). The test is objective and does not depend on whether the claimant genuinely believed in the claim (Vaughan v London Borough of Lewisham [2013] IRLR 713, EAT, at [14](6)).

34. Rule 74(2)(b) allows a Tribunal to make a costs order if it concludes that a claim had no reasonable prospect of success (an objective test).

35. The decision to make a costs order is the exception rather than the rule. This was made clear in Yerrakalva v Barnsley Metropolitan Borough Council [2011] EWCA Civ 1255; [2012] ICR 420 (3 November 2011) by Mummery LJ giving the lead judgment in the Court of Appeal at paragraph 7 as follows:

    "The employment tribunal's power to order costs is more sparingly exercised and is more circumscribed by the employment tribunal's rules than that of the ordinary courts. There the general rule is that costs follow the event and the unsuccessful litigant normally has to foot the legal bill of the litigation. In the employment tribunal costs orders are the exception rather than the rule. In most cases the employment tribunal does not make any order for costs."

36. In considering whether to exercise its discretion to order costs, the Tribunal does not have to find a precise causal link between any relevant conduct and any specific costs claimed. In Barnsley Metropolitan Borough Council v Yerrakalva [2012] IRLR 78 the Court of Appeal stated at [41] that:

"The vital point in exercising the discretion to order costs is to look at the whole picture of what happened in the case and to ask whether there has been unreasonable conduct by the claimant in bringing and conducting the case and, in doing so, to identify the conduct, what was unreasonable about it and what effects it had."

37. Rule 75 provides as follows in relation to the procedure for making a costs application:

Procedure
75.*—(1) A party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties.*
(2) The Tribunal must not make a costs order or a preparation time order against a party unless that party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order).

38. Rule 76 provides as follows in relation to the amount of a costs order:

The amount of a costs order

76.*—(1) A costs order may order the paying party to pay—*

(a)the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party;

39. It is fundamental that the purpose of an award of costs is compensatory not punitive (see *Lodwick v Southwark London Borough Council* [2004] IRLR 554, at [23]).

40. Ms Greenley directed me to the case Kopel v Safeway Stores plc [2003] IRLR 753, EAT, which I agree is relevant to my determination as the respondent made an offer to settle these proceedings, noting that:

"In Kopel, Mitting J stated that the tribunal 'must first conclude that the conduct of an appellant in rejecting the offer was unreasonable before the rejection becomes a relevant factor in the exercise of its discretion under [r 74(2)(a) of the 2024 Rules]'."

41. Ability to pay is a relevant factor for the Tribunal to consider. Rule 84 provides as follows in relation to ability to pay:

Ability to pay
82. *In deciding whether to make a costs order, preparation time order, or wasted costs order, and if so the amount of any such order, the Tribunal may have regard to the paying party's (or, where a wasted costs order is made, the representative's) ability to pay.*

42. A tribunal is not obliged by rule 82 to have regard to ability to pay — it is merely permitted to do so. That said, in Benjamin v Interlacing Ribbon Ltd EAT 0363/05 (1 November 2005) the EAT held that where a Tribunal has been asked to consider a party's means, it should state in its reasons whether it has in fact done so and, if it has, how this has been done. Tribunals must always give reasons for a decision to take account or not take account of ability to pay – though the reasons can be brief (Jilley v Birmingham & Solihull Mental Health NHS *Trust* UKEAT/0584/06 (21 November 2007, unreported).

43. As noted by the EAT in Howman v Queen Elizabeth Hospital Kings Lynn EAT 0509/12 (30 April 2013) at paragraph 13, any Tribunal when having regard to a party's ability to pay needs to balance that factor against the need to compensate the other party who has unreasonably been put to expense. The former does not necessarily trump the latter, but it may do so. The fact that a party's ability to pay is limited does not require the tribunal to assess a sum that is confined to an amount that they could pay (see Arrowsmith v Nottingham Trent University [2012] ICR 159, at [37]).

Conclusions

44. I have applied these legal principles to decide the respondent's application for costs.

45. Rule 75 requires the application to be made "*up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties".* The withdrawal judgment was issued on 5 November 2024 and sent to parties on 25 November 2024. The respondent made the written application for costs on 13 December 2024. The application is in time.

46. In the Employment Tribunal. the decision to make a costs order is the exception rather than the rule. The test for imposition of a costs order under is a three-stage test:

    46.1. First, a Tribunal must ask itself whether a party's conduct falls within rule 74; and

    46.2. Second, if so, it must go on to ask itself whether it is appropriate to exercise its discretion (including taking account of the conduct of the paying party and their knowledge regarding the merits) in favour of awarding costs against that party; and

    46.3. Third, if discretion is exercise, the amount of the award.

Stage 1: are there grounds for a costs order?

47. The respondent is relying on 2 parts of rule 74 in this application.

    47.1. The claimant acted unreasonably in both the bringing of the proceedings and her conduct (Rule 74(2)(a) Employment Tribunal Procedure Rules 2024 (the "Rules"); and/or

    47.2. The claim had no reasonable prospect of success (Rule 74(2)(b)).

48. Furthermore, in applying under rule 74(2)(a), the respondent is relying on 2 elements of this provision, asserting that the claimant was unreasonable in:

    48.1. Bringing the proceedings; and
    48.2. In her subsequent conduct of the proceedings.

49. Rule 74(2)(a) allows a Tribunal to make a costs order if it concludes the conduct of a claimant in bringing or pursuing the claim was unreasonable (a subjective assessment of the claimant's knowledge of the merits). Whether conduct is unreasonable is a matter of fact for the tribunal. I note that "unreasonable" has its ordinary English meaning and is not to be interpreted as if it means something similar to "vexatious" (Dyer v Secretary of State for Employment EAT 183/83 (20 August 1983)).
50. In determining whether in bringing the claim the claimant's conduct was unreasonable, I have considered the fact that the claimant clearly genuinely felt aggrieved at what happened at the end of a lengthy period of employment (almost 15 and a half years, her sense of grievance evident from the document she includes with her ET1), a grievance she had raised internally with her employer before commencing proceedings. She is not represented, as is commonplace in the Employment Tribunal and therefore did not have the benefit of professional advice when deciding whether to bring the claim. The Employment Tribunal exists as a forum for workplace justice. In my judgement a claimant bringing a claim in circumstances of lengthy employment, where she still feels aggrieved having raised the issues about which she complains internally is not unreasonable conduct.

51. For the following reasons I do not consider the claimant's subsequent conduct in pursuing the claim unreasonable. The conduct I have considered is: not accepting the initial offer of legal advice, not accepting the settlement offers, failing to comply with the CMOs and withdrawing the claim a couple of days before the Second Preliminary Hearing. Again, I am mindful of all the circumstances and have taken account of the chronology of events.

52. In my judgement, it is not unreasonable conduct for an unrepresented claimant to decide not to accept an offer of a contribution to legal advice or to decide not to withdraw their claim before the respondent has provided their written defence.

53. I do not agree that the explanation provided in the first settlement letter would mean it is apparent to a non-represented party that their claim had no reasonable prospect of success, as suggested by the respondent. That is a matter for legal assessment. In my judgement, that the claimant sought to continue, both before and after the respondent files its Grounds of Resistance, with her claim in spite of the respondent's assessment of its merits was not unreasonable behaviour. That EJ Forde commented that the respondent's application for strike out and/or an unless order does not change my assessment. EJ Forde did not make this comment having considered the application or any response in detail; indeed, EJ Forde listed the Second Preliminary Hearing for that purpose.

54. Indeed, the claimant did subsequently accept the offer for legal advice, took legal advice and told me the advice she received did not agree with the respondent's assessment that her claim had no merit. Given the claimant did as suggested by the respondent and took advice, on receipt of that advice it was not unreasonable for the claimant to continue with her claim.

55. I consider the case of Lake v Arco Grating (UK) Ltd EAT 0511/04 relevant to my decision. In this case the respondent, prior to a tribunal hearing, offered not to pursue costs against the claimant if he withdrew his unfair and wrongful dismissal claims within 24 hours. The claimant did not do so and, in the event,

his claims were unsuccessful. The employment tribunal awarded costs against the claimant for having acted unreasonably in pursuing the proceedings after receiving the respondent's offer. On appeal, the EAT set aside that costs order, noting that a failure to accept the offer could not, of itself, constitute action in bringing or conducting the proceedings.

56. I also consider the case of Solomon v University of Hertfordshire and anor EAT 0258/18 relevant. The respondent offered a sum of £500 towards legal advice (as here). The EAT noted that this sum would only cover advice on the terms of the settlement and its effect on the claimant's right to pursue her claims. Any advice as to the merits would have required reading and consideration on a quite different scale. Given the claimant's complaints of age and disability discrimination by association, I consider the same here. Therefore, it is not the case, in my assessment, that even with legal advice paid for by the respondent, it would have been apparent to a lay claimant that her claim had not reasonable prospect of success.

57. In reaching this decision, I am mindful that in AQ Ltd v Holden 2012 IRLR 648, EAT the EAT held that an employment tribunal cannot, and should not, judge a non-represented party by the standards of a professional representative. I direct myself that it is appropriate for a litigant in person to be judged less harshly in terms of their conduct than a litigant who is professionally represented and that tribunals must not apply professional standards to lay people, who may well be embroiled in legal proceedings for the only time in their life. Non represented parties are likely to lack the objectivity and knowledge of law and practice brought to bear by a professional legal adviser. The EAT repeatedly stresses that tribunals must bear this in mind when assessing the threshold tests, including rule 74.

58. Next, I consider whether the claimant's failure to comply with the CMOs was unreasonable. In this regard, the claimant did have disregard for Tribunal orders. Was that unreasonable in all the circumstances?

59. The claimant was present at the First Preliminary Hearing and was aware from that hearing of her obligations for the next hearing. However, the written CMOs were not sent to the parties by Tribunal administration until 1 August 2024. This postdates the date by which the claimant was required to comply. This is unfortunate: it is neither the fault of the claimant or respondent. Making an allowance for the fact that the claimant did not have a written copy of the orders at the date she was required to comply and allowing for her inexperience in this forum, I do not find her conduct in failing to comply unreasonable. The respondent was still able to produce a hearing bundle and could have raised the failings by the claimant at the Second Preliminary Hearing. I am also mindful of the fact that the claimant did withdraw her claim before the Second Preliminary Hearing and in doing so gave an explanation which accords with the one she gave in this hearing; that she was dealing with her mother's ill health. The EAT case law directs me that to find unreasonable behaviour on the part of an unrepresented claimant requires some repetition or persistent behaviour. That is not evident in the case before me.

60. I do not consider the claimant's decision to withdraw her claim unreasonable conduct. In reaching this conclusion, I have take account of the decision in McPherson v BNP Paribas (London Branch) 2004 ICR 1398, CA in which the Court of Appeal observed, it would be unfortunate if claimants were deterred

from dropping claims by the prospect of an order for costs on withdrawal in circumstances where such an order might well not be made against them if they fought on to a full hearing and failed. It further commented that withdrawal could lead to a saving of costs and that tribunals should not adopt a practice on costs that would deter claimants from making 'sensible litigation decisions'.

61. The critical question in this regard was whether the claimant withdrawing the claim has conducted the proceedings unreasonably, not whether the withdrawal of the claim is in itself unreasonable. For the reasons stated above, it is my judgement that the claimant's conduct up to the point of withdrawal was not unreasonable. Furthermore, at the point of withdrawal, the claimant explained her personal circumstances for doing so. Indeed, at the time of her withdrawal, the claimant had received letters from the respondent in which the respondent had made it clear they would pursue an application for costs if she pursued her claims. In National Oilwell Varco (UK) Ltd v Van de Ruit EATS 0006/14 the EAT upheld an employment tribunal's decision that the claimant had not acted unreasonably in withdrawing his claim on the day prior to a pre-hearing review after receiving two letters from the employer's solicitors threatening an application for costs

62. Therefore I conclude that the claimant's conduct in bringing and pursuing her claim does not meet the threshold of unreasonable behaviour under rule 74(1)(a).

63. Rule 74(2)(b) allows a Tribunal to make a costs order if it concludes that a claim had no reasonable prospect of success (an objective test). This is a 3 stage test:

    63.1. Objectively, does the claim have no reasonable prospect of success;
    63.2. If so, should I exercise the tribunal's discretion as to whether or not to award costs; and
    63.3. if discretion is exercised in favour of making a costs order, the I must make an assessment of the sum to be awarded.

64. I have taken into account that the respondent spent considerable time and effort setting out in correspondence to the claimant why it considers the claim had no reasonable prospect of success. I am also mindful that the claimant is not represented and is likely to lack the objectivity and knowledge of law and practice brought to bear by a professional legal adviser. For this reason I disagree with the respondent that it would have been apparent, even after the respondent's lengthy explanation, to the claimant that the claim had no reasonable prospect of success.

65. The respondent's own assessment of the constructive dismissal case identifies that parties disagree on matters of fact (for example the number of days the claimant was entitled to work from Ireland). Where parties at the outset of the claim present different facts to the tribunal, findings of fact need to be made by a tribunal in receipt of documentary evidence (in this case the respondent's policy and the written offer made to the claimant) and oral evidence (why the claimant says she was only being allowed to work the equivalent of less than 1 day a week from Ireland). For this reason I find that, while the constructive dismissal claim may have little prosect of success, findings of fact would need to be made to determine that it had no reasonable prospect of success.

66. That said, I agree with the respondent's assessment that the complaint of disability discrimination by association had no prospect of success. The hurdles the claimant faces are that the factual complaints are out of time (which she accepts) and, even if she is able to persuade a tribunal that there is a just and equitable reason to extend time, the respondent's assessment of this claim is that "*It is not feasible to suggest that you were subject to any less favourable treatment by Allianz because of your parents' being in their 80s and/or their disabilities."* I agree that, from the information in the claim form it would be a challenge for the claimant to prove this to be the case.

67. However, due process for discrimination complaints allows for case management hearing, at which a non-represented party is given the opportunity to provide more details of the claim to a judge. In Cox v Adecco Group UK & Ireland and ors [2021] ICR EAT held that a tribunal had erred in striking out a litigant in person's claim as having no prospect of success without properly identifying the issues and then analysing their prospects of success. In my judgement, that approach is relevant here; objectively the respondent's assessment that the complaint had not reasonable prospect of success is premature as it is made before a non-represented party has had the opportunity to explain their complaint in case management. For the same reason, I cannot conclude on the information before me that the complaint of disability discrimination has no reasonable prospect of success.

68. For these reasons, objectively considering the information before me, I cannot conclude that this claim has no reasonable prospects of success pursuant to rule 74(2)(b).

Stage 2: should I make a costs order?

69. While I do not need to decide whether to exercise my discretion to make a costs order (or the amount of any order) as the respondent has not satisfied stage 1, had found that there were grounds for making a costs order, I would not have exercised my discretion to make a costs order. This is because:

    69.1. in the main the costs incurred by the respondent arise from the fact that the respondent has incurred significant costs in taking a somewhat front footed approach with a non-represented party is seeking to explain why the respondent considers the claim has no reasonable prospect of success, backed by cost warnings, without affording a non-represented claimant the opportunity to explain her case before a judge in a case management hearing. The claimant was entitled to disagree with the claimant's assessment and while the respondent had offered a payment towards legal advice, the payment offered would not facilitate an assessment of the merits of the claim (as indeed the level of costs incurred by the respondent in assessing the claim and writing to the claimant with its assessment evidence).

    69.2. It was reasonable for the claimant to refuse offers before sight of the ET3 and Grounds of Resistance.

    69.3. The claimant did not have sight of the written CMOs until after the dates had passed.

69.4. The respondent's application to strike out the claim / seek a deposit order was premature.

69.5. The claimant was entitled to withdraw her claim, particularly as the respondent had made more than one cost warning, and she provided her reason for doing so, which did not relate to her assessment of the mertis.

Employment Judge Hutchings

20 August 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON

17 September 2025

FOR THE TRIBUNAL OFFICE