



# EMPLOYMENT TRIBUNALS

**Claimant:** Mx U Miah  
**Respondent:** Synnovis Analytics LLP  
**Before:** Employment Judge Leith (on paper)

## JUDGMENT

1. The two deposits paid by the Claimant (in the sum of £1,000 each) shall be refunded to the Claimant.
2. The Respondent's application for a costs order is dismissed.

## REASONS

1. The Tribunal's reserved judgment on liability was sent to the parties on 22 October 2025. On 4 November 2025, the Respondent wrote to the Tribunal to ask the Tribunal to reach a conclusion regarding whether the Claimant's claims were brought within the relevant time limit. This was because a Deposit Order had been made by EJ Housego on 20 June 2024, and the reasons for making the Deposit Order referred in part to time limits.
2. The Tribunal wrote to the parties on 18 November 2025 noting that the Tribunal's reserved judgment set out the entirety of the Tribunal's reasoning for dismissing the claims, and that any matter not dealt with in the judgment did not form part of the Tribunal's reasoning. The Tribunal asked the parties to comment on whether the complaints of race discrimination and disability discrimination failed for substantially the reasons given in EJ Housego's Deposit Order.
3. On 19 November 2025, the Respondent made a costs application. The Respondent dealt, in that correspondence, with their position regarding EJ Housego's Deposit Order. The Respondent asked that the matter be dealt with on the papers.
4. On 20 November 2025, the Claimant wrote to the Tribunal to set out their position regarding the question of whether EJ Housego's Deposit Order was

engaged. The Claimant confirmed that they considered that the matter could be dealt with on the papers.

Law

5. The Tribunal's power to make a costs order or a preparation time order is set out in Rule 74 of the Tribunal Rules:

"74. (1) A 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.

6. The process for considering a costs order or a preparation time order is set out in rule 80, as follows:

80.—(1) The Tribunal may make a wasted costs order on its own initiative or on the application of a party.

(2) A party may apply for a wasted costs 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.

(3) The Tribunal must not make a wasted costs order unless the representative has had a reasonable opportunity to make

representations (in writing or at a hearing, as the Tribunal may order) in respect of the application or proposal.

(4) The Tribunal must inform the representative's client in writing of any proceedings under this rule and of any order made against the representative.

7. Where a Deposit Order has been made, Rule 40 (7) and (8) provide as follows:

“(7) If the Tribunal following the making of a deposit order decides the specific allegation or argument against the depositor for substantially the reasons given in the deposit order—

(a) the depositor must be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 74 (when a costs order or a preparation time order may or must be made), unless the contrary is shown, and

(b) the deposit must be paid to the other party (or, if there is more than one, to such other party or parties as the Tribunal orders),

otherwise the deposit must be refunded.

(8) If a deposit has been paid to a party under paragraph (7)(b) and a costs order or preparation time order has been made against the depositor in favour of the party who received the deposit, the amount of the deposit must count towards the settlement of that order.”

8. When considering whether to make a costs order or preparation time order, the Tribunal must apply a two stage test. First, the Tribunal must consider whether the relevant ground is made out. Secondly, the Tribunal must consider whether it is appropriate to exercise its discretion in favour of awarding costs against that party. It is for the party seeking costs to satisfy the Tribunal that the costs jurisdiction is engaged. Thereafter, it is for the Tribunal to satisfy itself that it is right and proper to exercise its discretion to award costs (*Haydar v Pennine Acute NHS Trust* EAT 0141/17).
9. Costs in the Tribunal are the exception rather than the rule. The rules regarding costs have been described by the Employment Appeal Tribunal as a “high hurdle” (Burton J in *Salinas v Bear Stearns International Holdings Inc and anor* [2005] ICR 1117).
10. “Unreasonable” has its ordinary English meaning (*Dyer v Secretary of State for Employment* EAT 183/83).
11. In determining whether to make a costs order on the ground of unreasonable conduct, the Tribunal needs to take in to account the “nature, gravity and effect” of the conduct in question – *McPherson v BNP Paribas (London Branch)* [2004] ICR 1398 (CA). The Tribunal must not, however, lose sight of the totality of the circumstances (*Yerrakalva v Barnsley Metropolitan Borough Council and anor* [2012] ICR 420 (CA)).

12. Costs in the Employment Tribunal compensatory not punitive. The Tribunal must consider the effect of any unreasonable conduct on the part of the party against whom the application is made, although there is no need for a precise causal link between the party's conduct and the specific costs being claimed (*Yerrakalva v Barnsley Metropolitan Borough Council and anor* [2012] ICR 420).
13. The Tribunal does not need to take into account a party's means in deciding whether to make an order, or if so in what amount. It is merely a factor the Tribunal may take into account. And if the Tribunal does take means into account, the fact that a party's means are limited as at the date of the hearing does not preclude an order being made against them, provided that there is a "realistic prospect that [they] might at some point in the future be able to afford to pay" – *Vaughan v London Borough of Lewisham and ors* [2013] IRLR 713 EAT.

#### Discussion and conclusions

##### Deposit Order

14. I start with EJ Housego's Deposit Order. The Claimant is a litigant in person. The hearing before EJ Housego was the first preliminary hearing in this case. At that point, the issues in the claim had not been clarified. EJ Housego noted that the chronology of events in the ET1 appeared to come to an end 10 months before the claim was issued. He noted that there was also an amendment application at large.

15. EJ Housego listed a preliminary hearing to consider the following points:

"17. I decided that this claim should be considered at a public preliminary hearing to decide whether to strike it out for the following reasons:

17.1. Whether the claims are filed out of time, and it would not be just and equitable to extend time.

17.2. Whether the claim of race discrimination has no reasonable prospect of success, as no link is suggested between the Claimant's ethnicity of British Bangladeshi and any matter of which she complains. It is not enough to complain of something and to say that because I am not white it must be race discrimination.

17.3. The claim of disability discrimination has no reasonable prospect of success because the Claimant has not been fit for work for 3 years and points to nothing which might lead a Tribunal to infer that this was the fault of the Respondent.

17.4. The conduct of the Claimant has been and is unreasonable by reissuing her claim 7 months after it was lodged. The reasons the Respondent sets out as to why they say this is wholly inappropriate

are set out in an email from their representative to the Tribunal dated 17 April 2024.

16. He then went on to say this:

“18. I consider these factors are such that the claims have little reasonable prospect of success.”

17. The operative part of EJ Housego’s Deposit Order said this:

“The Employment Judge considers that the Claimant’s allegations or arguments that she was subject to race discrimination or to disability discrimination have little reasonable prospect of success. The Claimant is ORDERED to pay a deposit of £1,000 for each of those claims not later than 14 days from the date this Order is sent as a condition of being permitted to continue to advance those allegations or arguments. The Judge has had regard to any information available as to the Claimant’s ability to comply with the order in determining the amount of the deposit. If she pays £1,000 she is to specify which claim she wishes to continue.”

18. Read as a whole, I therefore understand that the reasons why EJ Housego made the Deposit Order were, in summary, those set out in paragraph 17.1 – 17.3 of his reasons, namely:

- a. Time limits, in respect of both the race and disability discrimination claims.
- b. In respect of the race discrimination claim, because there was no link alleged between the Claimant’s race and the treatment complained of.
- c. In respect of the disability discrimination claim, because the Claimant had been unfit for work for three years (and there was nothing to suggest that that was the fault of the Respondent).

19. Paragraph 17.4 of EJ Housego’s reasons relates to the Claimant’s conduct of the litigation, and specifically the amendment application. I do not consider that that can have been part of the reason for making the Deposit Order, because it was not a suggestion that the claim or part of it had little reasonable prospect of success. In any event, the amendment application was dealt with at a subsequent preliminary hearing.

20. The Claimant paid both deposits. In the event, two further preliminary hearings took place, both before EJ Heath. At the first, EJ Heath clarified the issues and heard (and allowed, in part) an amendment application from the Claimant. At the second, EJ Heath decided not to strike the claims out.

21. The final hearing was conducted on 7 – 11 July 2025. The Tribunal reserved its judgment, and the reserved judgment was sent to the parties on 22 October 2025. The claims were dismissed.

22. What I must consider is whether the Tribunal decided the claims against the Claimant for substantially the reasons given in the deposit order. Taking the limbs of EJ Housego's reasoning in turn:

*Time limits, in respect of both the race and disability discrimination claims.*

23. The short answer to this is that the Tribunal did not reach any express conclusion regarding time limits. This is because each of the allegations was dismissed on its merits, so it was unnecessary to consider time limits. Therefore the applicable time limit cannot have been, and was not, the reason why the Tribunal decided the claims against the Claimant. The Deposit Order was not specifically made on the issue of whether there was a continuing act, or whether it would have been just and equitable to extend time. Rather, the Deposit Order was made in respect of the claims of race discrimination and disability discrimination as a whole. Those claims did not fail because they were brought outside the relevant time limit; they failed for the reasons explained in the Judgment. So it follows that time limits were not the reason why either the complaints of disability discrimination or race discrimination were decided against the Claimant.
24. In any event, by the time the issues had been clarified there was one allegation of discrimination arising from disability which was undoubtedly brought within the primary time limit (paragraph 37 of the list of issues). There were additionally allegations of failure to make reasonable adjustments which were arguably brought within the primary time limit (paragraphs 42.1 and 42.3). Again, the Deposit Order was not granular regarding the complaints of disability discrimination. There was not, for example, a Deposit Order in respect of the complaint of harassment related to disability (which was clearly brought outside the relevant time limit). So there is no way that claim of disability discrimination as a whole could have failed on the basis of time limits, because at least part of that complaint was unarguably brought in time.

*In respect of the race discrimination claim, because there was no link alleged between the Claimant's race and the treatment complained of.*

25. The complaint of direct race discrimination was withdrawn by the Claimant. What remained was a complaint of harassment related to race. There were two allegations. One allegation was about Ms Shah referring, in the meeting on 2 February 2022, to white privilege and to having mixed race children. That allegation failed because the Tribunal concluded that the comments were not unwanted. It did not fail because of a lack of link to race. EJ Housego's Deposit Order may have been made with a direct discrimination complaint in mind; the issues had not been clarified at that point. So his reasoning is not entirely apt for the causal test in respect of the harassment complaint. But in any event, that is simply not the reason why the Tribunal decided that allegation against the Claimant.
26. The other allegation was about Mr Best referring to posts on the Claimant's social media which suggested she used recreational drugs. Of course given

how the issues were clarified, it is not right to say that there was no link alleged between the Claimant's race and the treatment complained of. The Claimant's case was that the comments about drug use were racially coded – that is clearly an allegation that there was a link between the what Mr Best said and the Claimant's race. However, the Tribunal concluded that that was not the reason why the comments were made. So that allegation did fail, in part, because there was found that the comment was not related to the protected characteristic of race.

27. But once again, the Deposit Order was not specifically about the allegation in respect of Mr Best. It was made in respect of the race discrimination complaint as a whole. Stepping back, I cannot say that the race discrimination complaint as a whole was decided against the Claimant because of a lack of link between the conduct alleged and the protected characteristic.

*In respect of the disability discrimination claim, because the Claimant had been unfit for work for three years (and there was nothing to suggest that that was the fault of the Respondent).*

28. Firstly, the Claimant had not been unfit to work for three years. The claim was presented on 24 November 2023. They had been absent at that point since June 2021 (although not all of that absence had been on sick leave). But in any event, this is not the reason why any part of the disability discrimination complaint failed.
29. It follows then that I conclude that neither the complaints of disability discrimination or race discrimination were decided against the Claimant for substantially the reasons given in the Deposit Order. The deposits will be returned to the Claimant.

#### The costs application

30. The Respondent's costs application baldly asserts that the Claimant acted "vexatiously, abusively, disruptively and unreasonably in bringing and continuing with the claims".
31. There is nothing within the application itself to make good the allegation that the Claimant's conduct was vexatious, abusive or disruptive, within the meaning of the rules. It was apparent during the hearing that the parties had fallen into dispute regarding preparing the case for hearing. We made, within the liability judgment, some criticisms of the Respondent's disclosure. But there has been no material presented with the allegation regarding the conduct of the proceedings more generally. An allegation that a party has acted vexatiously, abusively or disruptively should be explained in detail, supported by evidence of that alleged conduct. It is surprising that a legally represented party would make a bald assertion of such conduct, without in any way explaining or supporting the allegation. On the application before me, I simply cannot conclude that the Claimant's conduct was vexatious, abusive or disruptive.

32. The basis of the Respondent’s suggestion that the Claimant conducted the proceedings unreasonably is merits-based. That is, it is said that the Claimant acted unreasonably by continuing to litigate in the face of EJ Housego’s Deposit Order (and a costs warning made by the Respondent). I have already explained why I do not consider that rule 40(7) bites in respect of the Deposit Order.
33. Stepping back, while the Claimant was ultimately unsuccessful on all of the allegations in the claim, I do not consider that she acted unreasonably in pursuing it to a final hearing. The Tribunal is, save as set out in rule 74, a cost-neutral jurisdiction. Parties are entitled to litigate to a final hearing without facing the risk of costs simply because they have been unsuccessful. This is not a case where I consider that the Claimant’s claims had no reasonable prospect of success. They were dismissed on their merits having heard all of the evidence. And given my conclusion regarding the Deposit Order, I do not consider that the Claimant could be said to have acted unreasonably by continuing to litigate in the face of that Order.
34. The Respondent’s costs application refers to a “without prejudice save as to costs” offer of £3,500 made to the Claimant on 15 August 2024. The Claimant rejected that offer. The Claimant failed in her claims. Had she succeeded, even in part, I consider that it is likely that any award would have exceeded that offer. So this is not a case where it was inherently unreasonable of the Claimant to continue to litigate in the face of the offer. I do not consider that the offer takes me any further.
35. It follows then that I conclude that the grounds for making a costs order are not made out. The Respondent’s costs application is dismissed.

Approved by:

**Employment Judge Leith**

Date: **12 January 2026**

JUDGMENT & REASONS SENT TO THE PARTIES ON  
**14 January 2026**

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FOR THE TRIBUNAL OFFICE

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**Case No: 2306450/2023**

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