



EMPLOYMENT TRIBUNALS

Claimant: Mr G Nyanteh

Respondent: Maxcare Ltd

JUDGMENT

1. The claimant's application for a preparation time order or wasted costs order is dismissed.
2. The respondent's application for a costs order is dismissed.

REASONS

INTRODUCTION

1. On 21 May 2025 EJ Hunt made a deposit order in this case. The judge varied the amount of the deposit in an order dated 22 May 2025. The deposit covered the whole of the claimant's claim. The claimant did not pay the deposit and on 28 July 2025 I prepared a judgment, issued to the parties the same day, recording the claimant's claim as having been struck out for non-payment of the deposit.
2. That is not the end of the claim. According to papers that have only recently been referred to me, on 1 or 2 July 2025 the respondent made an application for costs against the claimant. That application was said to be made "*on the basis of the Claimant's conduct for the reasons set out above in respect of the bringing and pursuing a claim which is wholly without merit and ignoring all communications setting this out to him, and for the way that he has conducted the proceedings to date.*"

THE CLAIMANT'S APPLICATION

3. The claimant replied to that application on 7 September 2025. In doing so he made an application for wasted costs (and for a preparation time order).
4. Rule 75(1) provides that "*a party may apply for a costs order or 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*". Rule 80(2) is to similar effect in respect of a wasted costs order.

5. The judgment finally determining the proceedings was sent to the parties on 28 July 2025. It follows that the preparation time order and wasted costs order applications made by the claimant on 7 September 2025 are made outside the time limit permitted for such applications. The claimant's applications are dismissed on that basis.

THE RESPONDENT'S APPLICATION

6. The claimant's response to the respondent's application includes the following, which I need to consider as a preliminary point to the respondent's application:

"Under Rule 73(1) of the 2024 Rules, a costs order may only be made where a party has incurred costs while represented by a legal or lay representative. The Respondent has not established such entitlement ...

I must also raise concerns as to Ms Spencer's standing. The only Carole Spencer I have been able to identify on the Solicitors' Register is employed [by another firm in another field of expertise]. She is not listed as practising with Excello Law, nor as a solicitor in this jurisdiction specialising in employment law.

On that basis, this particular Ms Spencer appears to be acting as a lay representative. While lay representation is permitted, I am concerned that the Tribunal may be misled as to her professional status."

7. The references there require some explanation. The respondent submitted its response without having any representative. The first notification of a representative came in 25 March 2025, when Carole Spencer wrote saying "we act for the respondent". Her email sign off describes her as a paralegal at Excello Law. The footer to the email says that Excello Law is authorised and regulated by the SRA.
8. So I do not accept the claimant's suggestion that "*the tribunal may be misled as to her professional status*". She has from the start, quite properly, described herself as a paralegal. In her response to this element of the claimant's application she says:

"It is confirmed that Excello Law are instructed for the Respondent. Ms Spencer is authorised by Excello Law to carry out work under the supervision of Ms Karen Coleman or Mr Alasdair Hobbs, and was doing so at all times. The allegation of acting as a lay person whilst misrepresenting the same to the Tribunal is denied in the strongest possible terms. Work carried out by fee earners of all grades is recoverable under an application for costs."

9. However, the claimant may have a point in questioning whether Ms Spencer is a lay representative as opposed to a legal representative.

10. In what follows I will concentrate on the question of being a “legal representative”. The respondent is applying for costs on the basis that would apply for a legal representative and not on the basis that would apply for a lay representative, which would, amongst other things, involve a limit on the fees recoverable (rule 76(2)).
11. A costs order, as sought by the respondent, in respect of a legal representative is (rule 73(1)(a)) “*an order that the paying party make a payment to the receiving party in respect of the costs that a receiving party has incurred while represented by a legal representative ...*”.
12. Under rule 2, a “*legal representative*” is a person who “*has a right of audience in relation to any class of proceedings in any part of the Senior Courts of England and Wales, or all proceedings in county courts or magistrates’ courts.*”
13. The key question on this preliminary point is whether the respondent has been represented in these proceedings by a “*legal representative*”.
14. That provision seems to me to make it clear that it is referring to a representative as an individual, not as a firm or corporate body. A firm such as Excello Law does not in its own right have such a right of audience. It is only individuals who have that right of audience.
15. While Ms Spencer does not suggest that she would personally fall under the definition of a “*legal representative*”, she relies on being authorised “*to carry out work under the supervision of Ms Karen Coleman or Mr Alasdair Hobbs*” who, I presume, the respondent says would count as legal representatives.
16. I cannot claim to have reviewed every document on the tribunal file, but I see nothing to suggest that it was Ms Coleman or Mr Hobbs as opposed to Ms Spencer who was the representative for the respondent. I can see in the bundle prepared for this costs application that on many occasions Ms Spencer has copied emails to Ms Coleman or Mr Hobbs, but I think on every occasion that is by way of “bcc” so their involvement would not have been apparent. For the avoidance of doubt I am not criticising the use of “bcc”, but emails being sent as “bcc” to them does nothing to suggest to me that they were, in fact, the representatives for the respondent.
17. The respondent’s representatives since 25 March 2025 have always been either (depending on how one interprets representative) Carole Spencer or Excello Law. Nothing in this decision should be taken as a suggestion that Ms Spencer was not a suitable person to be conducting this litigation on behalf of the respondent. However, neither she nor her firm fall within the definition of “legal representative”. The respondent has not incurred any costs “*while represented by a legal representative*” and as such the application for costs that the respondent has made must be dismissed.

Approved by Employment Judge Anstis
15 December 2025

Judgment sent to the parties on:
30 January 2026

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For the Tribunal:

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