



EMPLOYMENT TRIBUNALS

Claimant: Kalpna Shah
Respondent: Patient Billing Limited

Heard at: Watford Employment Tribunal
On: 20 January 2026
Before: Employment Judge Alliott

Representation

Claimant: In person
Respondent: Mr Jesse Crozier (counsel)

JUDGMENT

The judgment of the tribunal is that:-

1. The claimant's claim is struck out as it has no reasonable prospects of success (Rule 38 Employment Tribunal Rules of Procedure 2024).

REASONS

1. This public preliminary hearing was listed by Employment Judge Shastri-Hurst on 8 August 2025 to:

“Consider strike out and deposit order and whether the claimant should be given leave to amend the claim.”

The evidence

2. I had a hearing bundle of 148 pages.
3. Mr Crozier provided me with a skeleton argument for which I am grateful.

The facts

4. On 5 April 2023 the claimant was “TUPE” transferred from the Royal National Orthopedic Hospital NHS Trust to the respondent.
5. The claimant subsequently presented two claims before the employment tribunal (3304907/2023 and 3305499/2023) complaining about aspects of the TUPE

transfer and alleging discrimination, victimisation, harassment and bullying. From the context of the claims the protected characteristic was taken to be sex.

6. The claims were compromised in a COT3 agreement dated 12 October 2023. This provides:-

“2. The Claimant irrevocably withdraws the proceedings numbered 3304907/2023 and 3305499/2023 in the Watford Employment Tribunal (the “Claims”) and confirms that they shall upon this agreement become legally binding through Acas email the Employment Tribunal withdrawing the claims in the form attached at Schedule 1 to this COT3. The Claimant confirms that they will copy the Respondents into this email withdrawing the Claims. The Claimant and the Respondents hereby confirm their understanding that the Claims will be dismissed following the withdrawal of the Claims by the Claimant pursuant to Rule 52 of the Employment Tribunals Rules of Procedure 2013. The Claimant recognises the Respondent’s right to bring this COT3 to the attention of the courts and tribunals.

...

4. The Claimant’s employment shall terminate on 11 October 2023 (“the Termination date”).

...

9. The Claimant accepts that the Payment and the Respondent’s obligations under this COT3 is in full and final settlement of:

a. The Claims;

b. all or any other claims of whatever nature which the Claimant has as at that date of this COT3 against the Respondents and/or against any employee, worker, agent or officer of the Respondents arising out of or in connection with the Claimant’s employment with the Respondents and/or its termination whether or not any such claims exist or are known to the parties or are recognised by law at the date of signing this COT3, whether such a claim arises under statute or otherwise and whether falling within the jurisdiction of an Employment Tribunal or not;

...

d. all or any claims which the Claimant has as at that date of this COT3 against the Respondents or any of its servants or agents including but not limited to claims under contract law,...the Employment Rights Act 1996, The Working Time Regulations 1998... The Equality Act 2010, at common law (in particular, whether in contract or tort) ... or otherwise but excluding any claims to enforce the terms of this agreement, in relation to the claimant’s accrued pension entitlements (subject to paragraphs 12 and 13 below) or any future personal injury claims of which the claimant is not aware at the date of signing this COT3.

...

14. The claimant warrants that they:

a. Have not brought or pursued or will not bring or pursue any application to the Employment Tribunal in respect of the Claims or attempt to reinstate the Claims or bring or pursue any other proceedings arising out of or in

connection with their employment with the Respondents or its termination;”

7. On 12 October 2023 Employment Judge Forde issued a judgment as follows:-

“The complaints of sex discrimination, harassment, and TUPE related claims are dismissed following a withdrawal by the claimant.”
8. It is clear beyond doubt that the settlement agreement expressly addressed questions relating to the claimant’s pension. Clause 12 provides for the respondent to continue to secure a direction letter to enable the claimant to retain either continuous active membership of or eligibility for the NHS pension scheme for the period from 5 April 2023 to the termination date. Once a direction letter had been obtained, the agreement provided for the respondent to pay to the NHS pension scheme all such employer contributions and other amounts due under the direction letter and that the claimant would pay the relevant employee contributions into the NHS pension scheme.
9. Both the applications to amend and the strike out application are, in my judgment, intrinsically interlinked. However, in my judgment, it is important properly to understand what the case is about before determining whether it has a reasonable prospect of success.
10. The claimant’s claims are not immediately apparent from the documents. I spent well over an hour discussing with the claimant what her claims are.
11. The claimant’s ET1 form is blank but does have a document attached to it. This is five pages long and begins by reciting Clause 12 of the COT3 agreement. The claimant then sets out a large amount of correspondence between her and the respondent dealing with the direction letter. The gist of what the claim presented is about is contained at the end in paragraph 9 which states:-

“9. The correct pension procedure has not been also followed as I have paid more tax with NEST pension than I would have with NHS pension.

The correct procedure should be

 - On transfer, PBL to have provided me more information on the position regarding my NHS pension scheme and the process PBL will follow to ensure I remain in the scheme. This was not provided to me.
 - During the time and date of transfer under TUPE, PBL should have continued to deduct employee contributions and make employer contributions at the current NHS rate as part of the scheme whilst the application is being processed. Once authorised, PBL should then pay across all backdated pension contributions to the NHS. I should have continued to see these costs on my payslip and pension contributions. Instead PBL enrolled me on NEST pension subjecting me to pay more tax.”
12. The claimant elaborated on this and explained to me that her complaint was that when “TUPE” transferred to the respondent she was placed on the respondent’s pension scheme, referred to as NEST. The claimant told me that her employee pension contributions were deducted from her net earnings following the application of tax. The rate was 4%. It is the claimant’s case that the NHS contribution was 9.8% and was taken prior to tax. From the claimant’s

calculations the claimant paid a total of £553.16 into the NEST pension whereas she says that her employee contribution to the NHS pension would have been £2,402.53 (based on a salary of £39,769).

13. Pursuant to the terms of the COT3 agreement, a direction letter was secured in Septemebr 2024 and, after negotiation, the respondent paid a sum by way of employer pension contributions to the NHS fund. The claimant has not paid her employee contribution to the NHS fund and, consequently, the pension remains frozen. At one stage the claimant was suggesting that she needed her contributions from the NEST pension in order to make her payment to the NHS fund. However, from the claimant's own figures it is quite clear that her NEST contributions were significantly lower than the contributions she says should have been made. The irony is that, in all probability, had the matters been dealt with as the claimant wanted, she would have paid more to her pension scheme and, consequently, probably owes the respondent money.
14. As far as the claimant's proposed amendments are concerned, these are contained in documents dated 11 December 2024, 30 January 2025 and 9 February 2025. Again, I took some time in discussing with the claimant what her proposed claims were. These are as follows:-
 - 14.1 It is the claimant's claim that prior to her TUPE transfer she had been awarded a 5% pay increase. It is the claimant's case that upon being TUPE transferred she was paid at a lesser salary of £37,875 rather than the £39,769 she says she was due. As such, her proposed amendment is to claim unauthorised deduction of wages and/or breach of contract in relation to underpayment of her salary and holiday pay.
 - 14.2 The claimant told me that she wished to advance a claim of disability discrimination relying on a mental impairment.
 - 14.3 The claimant told me that she wished to bring a claim of harassment related to disability.
 - 14.4 The claimant told me that she wished to bring a claim of victimisation. The protected act relied upon was complaints concerning TUPE and pension concerns. In my judgment, those do not relate to the Equality Act.
 - 14.5 The claimant told me that she wished to bring a public interest disclosure (whistleblowing claim). The nature of the protected disclosure was unclear to me.
15. Clearly, the salary issue relates to a claim during the course of the claimant's employment. The claimant told me that the detriments that she was relying upon in relation to all the other Equality Act claims and the whistleblowing claims covered the period up until 11/12 October 2023. As such, they were all contained within the period of the claimant's employment.
16. In judging whether the claimant has reasonable prospects of success, I have to take the claimant's claims at their highest. Accordingly, I approach this exercise on the basis that the claimant will establish all the facts she is alleging in relation to the various breaches she is bringing or potentially bringing by way of amendment.

17. In my judgment, all the claims that the claimant is bringing and/or is hoping to bring are covered by the COT3 agreement. However the claimant's TUPE related claims are put, whether as breach of contract, declaration of employment rights or some other claim, in my judgment, they were clearly compromised in the COT3 agreement and the dismissal judgment which specifically relates to "TUPE related claims".
18. Further, all of the proposed amended claims, in my judgment, are covered by the wording of the COT3 agreement.
19. Consequently, I find that the claimant's claims have no reasonable prospect of success as they have been compromised.
20. Any questions relating to setting aside the compromise agreement or the enforcement of the compromise agreement are not within the jurisdiction of the employment tribunal.

Costs

21. At the conclusion of the decision on strike out, the respondent has made an application for costs. This preliminary hearing was originally listed for 16 September 2025 but was vacated the day before due to a lack of judicial resource.
22. The respondent's application is limited to counsel's brief fees. Counsel's brief fee for 16 September was £5,500 and the refresher for today's hearing is in the sum of £3,000. Those figures are net of VAT as the respondent can reclaim the VAT.
23. I have found that the claimant's claims had no reasonable prospect of success.
24. The claimant issued her claim form on 3 October 2024. In January 2025 the claimant was sent two letters by the respondent setting out that her claim had no reasonable prospects of success. The claimant was further written to on 14 August and 26 August reiterating that her claims had no reasonable prospect of success because of the COT3 agreement. Shortly prior to the adjourned hearing on 16 September 2025 the claimant was sent the respondent's skeleton argument which clearly sets out the respondent's position that the claimant's claims have no prospect of success.
25. In light of the COT3 agreement, in my judgment the claimant was unreasonable in bringing these proceedings. I have no doubt that prior to entering into the COT3 agreement the claimant was advised in plain terms by the ACAS conciliator that entering into the agreement would terminate all claims arising out of her employment and its termination.
26. The claimant has sought to impress on me that she is a litigant in person and that she genuinely believed she had a claim, fundamentally based on her assertion that it was only after she entered into the COT3 agreement that certain matters came to her attention. However, in my judgment, the wording of the COT3 is plain. Further, the claimant in her various amendment applications has cited legal cases which demonstrates to me that she is well able to research the law if she wants to. In a similar vein, especially faced by the warning letters from the respondent's solicitors, in my judgment, she could and should have

researched the effect of a COT3 agreement on the various claims that she has been trying to bring in these proceedings.

27. In my judgment, the claimant's conduct of these proceedings has been unreasonable.
28. In the circumstances, I have to go on to consider whether or not to make a costs order.
29. In considering whether or not to make a costs order I have to address whether the claimant knew that she had no reasonable prospects of success. I am prepared to accept that the claimant may have been confused. However, when objectively applying the test I have to do as to whether she could reasonably have been expected to know she had no reasonable prospect of success, I find that objectively she should have known that she had no reasonable prospect of success. She could have researched the matter and the issues relating to the finality of COT3 agreements are plain.
30. Consequently, I have decided to go on to make a costs order.
31. In my judgment, a brief fee of £5,500 is excessive for a one day application. In my judgment a reasonable fee would be £3,000. In addition, I allow £1,750 for a refresher.
32. Consequently, the costs order I make is in the sum of £4,750.
33. In arriving at that figure, I have taken into account the claimant's means as she has described them to me. The claimant has no job and is in receipt of no benefits and is clearly living dependent upon her husband. The claimant has some savings but would not tell me how much, even roughly. It is clear to me that the claimant has substantial equity in her property. Consequently, in my judgment, the sum of £4,750 is within the ability of the claimant to find given her means.

Approved by:

Employment Judge Alliot

Date: 2 February 2026

JUDGMENT SENT TO THE PARTIES ON

2 February 2026

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FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/