



EMPLOYMENT TRIBUNALS

Claimant: Mr S Hussain
Respondent: Arrow Enterprise Computing Solutions Limited

Heard at: Watford Employment Tribunal
On: 5 January 2026

Before: Employment Judge French
Members: Ms S Campbell
Ms A Brosnan

Appearances

For the Claimant: In person
For the Respondent: Mr R O'Dair, counsel

JUDGMENT having been drafted on 5 January 2026, but not yet sent to the parties and written reasons having been requested on 18 January 2026 in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS ON COSTS

Introduction

1. Following the liability Judgment on 21 January 2025, the respondent made an application for costs on 13 February 2025. The application was opposed by the claimant, and the application was subsequently listed before the Tribunal on 5 January 2026 to determine the application.

Evidence

2. For the purposes of the cost proceedings, we had a bundle that consisted of 375 electronic pages. We also have a skeleton argument produced by the respondent together with two authorities on the matter. Separately, that is not part of the main bundle, we have an email from the claimant, Mr Hussain, dated 28 December 2025, which attaches three documents; a document called 'the main defence', a defence bundle, and a document called 'costs letter'.
3. Mr Hussain had emailed the Tribunal in advance indicating that he did not intend on attending the hearing because he did not consider he was well enough to. He invited the Tribunal to proceed in his absence, based on the

written representations he had made.

4. Mr Hussain did in fact attend the hearing and we are grateful to him for his attendance. He was able to confirm the documents that he had submitted in opposition of the costs application, and confirmed his reliance on the same by way of his representations. We were also able to obtain some additional information from him in relation to his means. That has also assisted us in relation to determining the application.
5. Having indicated that the Tribunal would need to take some time to consider the application, the claimant indicated that he would not be returning to the hearing for the decision and again invited us to proceed in his absence. Having returned, the claimant did not attend, and we provided the oral decision and reasons to the respondent. On 18 January 2026, the claimant requested the written reasons for the decision which are now provided.

The law

6. Rule 74 of the Employment Tribunal Procedure Rules 2024 states as follows:

(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.

7. The Tribunal Rules impose a three-stage test: first, the tribunal must ask itself whether a party's conduct falls within rule 74(2)(a) — in other words, is its costs jurisdiction engaged?; if so, secondly, it must go on to ask itself whether it is appropriate to exercise its discretion in favour of awarding costs against that party; the third stage is the determination of the amount of any award.
8. The test for whether the claim had no reasonable prospect of success is objective, not subjective (Vaughan v London Borough of Lewisham [2013] IRLR 713, EAT).
9. It was well established under previous versions of the Rules of Procedure that the term 'misconceived' could cover unmeritorious claims brought by employees who, possibly because they are unrepresented, are unaware of the legal position and genuinely believe that their employers have committed illegal acts against them and that the term misconceived includes having no reasonable prospect of success.

10. In Scott v Inland Revenue Commissioners 2004 ICR 1410, CA: Lord Justice Sedley observed that 'misconceived' for the purposes of costs under the Tribunal Rules 2004 included 'having no reasonable prospect of success' and clarified that the key question in this regard is not whether a party thought he or she was in the right, but whether he or she had reasonable grounds for doing so. The Court of Appeal held that the employment tribunal's decision in this particular case not to award costs against S should be reconsidered, as it was not clear that the tribunal had directed its attention to the questions of whether S's case was doomed to failure or, if it was, from what point.
11. Rule 82 states: *'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.'*

Conclusions

Is the costs jurisdiction engaged?

12. The Tribunal are satisfied that the costs jurisdiction is engaged under rule 74(2)(b) namely that various complaints pursued by the claimant had no reasonable prospect of success.
13. We acknowledge, which is accepted by the respondent in any event, that this was not a claim in its entirety that had no reasonable prospects of success and we would concur with what Mr O'Dair conceded, namely that two of the complaints did call for an explanation by the respondent. Those were identified as a comment made by Mr Dobson in a disciplinary meeting in 2020 and then a message then sent by Ms Casbon in August 2022 to the claimant querying why he was calling in sick on a Monday. Therefore, this is not a claim that in its entirety had no reasonable prospect of success.
14. However, we do consider that a number of the complaints, had no reasonable prospects of success in circumstances where the contemporaneous documents spoke for themselves as to the conclusions that we subsequently reached. Those documents were all within the claimant's possession pursuant to the disclosure direction made in the order of EJ Manley on 9 October 2023 which directed disclosure by 20 October 2023.
15. The Tribunal considers that the claimant would have needed some time to consider those documents and either undertake his own research on the same or seek advice. We therefore consider that the complaints were misconceived by January 2024. In any event, the respondent does not seek the entirety of the costs incurred as outlined below. We consider that this takes into account the fact that not all of the complaints were bound to fail but also the stage at which the claimant should have been aware of the same.
16. We consider that based on the findings in our liability judgment there were a number of complaints that had no reasonable prospect of success. We do not repeat the contents but in particular have regard to paragraph 69 of the written reasons, 73 and 74 and 114, 115, then further paragraphs 152, 169-171, 180-

183, 186, paragraphs 189-197 and 212-214.

17. We conclude, based upon those findings, that there were complaints where the contemporaneous documents supported the conclusions that we ultimately reached and, in effect, were such that it made the claimant's complaints, ones that were bound to fail.
18. For example, one of the complaints was a failure to implement Occupational Health recommendations. However, in a subsequent occupational health report it was recorded on the claimant's own admission, that there had, in fact, been an implementation of the recommendations. That claim therefore had no reasonable prospect of success because the contemporaneous documents on the claimant's own admission did not support the complaint.
19. A further example of this is complaints concerning the claimant's annual leave, where he said this had either been refused or restricted. The contemporaneous evidence however demonstrated that the claimant had actively been encouraged to take leave and where it had been refused it was due to operational needs of the team due to others being on leave. We consider that the complaints about holidays were therefore bound to fail.
20. Again, we do not repeat those findings but based on them, those were complaints where the Tribunal considers that the contemporaneous documents spoke for themselves such that the complaints as alleged had no reasonable prospects of success.
21. The costs regime is therefore engaged on that basis. The respondent also submitted that rule 74(2)(a) was engaged, arguing that the claimant unreasonably pursued the complaints. We consider this is not only relevant to whether the costs regime is engaged, but we also consider that it is relevant to the second stage of the test, namely whether we should exercise our discretion to make a costs order and that there is a degree of overlap.
22. We acknowledge the claimant's health condition as set out in the medical evidence he has provided as part of his representations on the application. It is clear that since the hearing on liability his health appears to have worsened, and is having a significant impact on him. That being said he presents as an individual who is clearly very capable. He did so throughout the final hearing and has done so in dealing with this costs application. He has provided six responses in total to this costs application being within the bundle or separately provided as above. Those contain detailed submissions which include well-articulated submissions on the law. We therefore conclude that he is therefore clearly capable of conducting legal research.
23. The claimant accepts that he had assistance from the Citizen's Advice Bureau which included advice on time limits in this case. At the time he presented his claims, he was still working in a role with a salary of £35,000.00 per annum. Whilst it is a matter for him to decide if he wishes to be legally represented, he could have and had the means to obtain even limited legal advice on the merits of his case.

24. The claimant has placed reliance on what was said to him by Judges during the course of preliminary case management and his suggestion was that those Judges endorsed his complaints having looked at documents and in listing a final hearing, gave some sort of endorsement as to the merits of the claim. We would reject such a suggestion. That is not borne out from the case management orders which separately appear in the bundle. There is nothing that records or gives any indication as to the merits of the complaints. This would also not be the practice of the tribunal; we are neutral in the process, and it would be inappropriate at a case management stage to give any kind of endorsement in one party's favour or another.
25. In those circumstances, we do also consider that the complaints were unreasonably pursued because we consider that the documents on which we reached our conclusions were in the claimant's possession, he was capable of taking a view on those complaints in light of those documents or seeking advice on the merits of the same either through his own research or obtaining legal advice.

Is it appropriate to exercise our discretion?

26. We therefore go on to the second stage, which is whether it is appropriate to exercise our discretion to award costs. We do acknowledge that there was a lack of costs warning by the respondent in this case, which we observe as unusual in the circumstances as are now identified by the respondent.
27. However, that does not prevent us from making an award of costs. The rules do not require the same. We do however have regard to it in terms of whether or not to exercise our discretion particularly in circumstances where the claimant says the information he received from the Citizen's Advice Bureau was that costs were exceptional.
28. That being said, it is recorded in the case management orders that the claimant is directed to the Employment Tribunal Rules of Procedure, they are linked within the case management orders, and that, of course, includes the rules on costs which the claimant could have availed himself of.
29. We also acknowledge that there was no strike out application made by the respondent. We do not place any criticism on the respondent in relation to that in circumstances where on the case law, such arguments are unlikely to succeed where we are concerned with discrimination complaints, as we were in this case. We do, of course, acknowledge that it was also open to them to seek a deposit order instead, and they did not do so. Again, this is a factor we have had regard to when looking at whether or not to exercise our discretion in that the claimant was not on notice of the same. However again we would reiterate that the rules do not state that costs can only be made where a deposit order has been sought.
30. Ultimately, we have concluded that some of the complaints had no reasonable prospects of success and were pursued unreasonably. This is in circumstances where, we consider that the claimant could have obtained legal advice or, if not, he was clearly a capable individual in conducting his own research. That is

borne out from the documents and the role that he was performing when he lodged his ET1; it is borne out from the documents that he produces even in response to this costs application, where there is evidence of legal research. In those circumstances, we consider therefore that he was perfectly capable of assessing the documentary evidence, that, quite clearly, went against the claimant's assertions.

31. As to the claimant's mental health condition, we concluded that he was disabled within the meaning of the Equality Act as part of our findings back in January 2025. As to the severity, all of the evidence that the claimant has produced for the purposes of this application, points to a significant decline of that condition when, firstly, he lost his original claim, but, secondly, when the respondent made the costs application. In those circumstances, although we recognise that he had that condition, we do not consider that that was such to prevent him from effectively assessing that evidence and making a reasonable decision based on the documentary evidence that he was provided with.
32. Again, this is in circumstances where the claimant came before this tribunal and said that, for example, a phased return to work had not been granted, but on the documentary evidence in the next Occupational Health report, he was recorded as having accepted that there had, indeed, been a phased return to work and went as far as saying he was content with the same.
33. In deciding whether to exercise our discretion, this is a case where we consider that because of the complaints that were pursued unreasonably and/or with no reasonable prospects of success, additional resources of the Tribunal and respondent were required. It led to a longer hearing time, additional witnesses and resources, and in those circumstances, the tribunal does consider that it is appropriate to exercise our discretion to award costs.

The amount of the award

34. We turn to the third stage and that is the amount of the award. In this regard, we have in mind rule 82 both in terms of whether or not to make an award at all having regard to the claimant's means but also in terms of the amount.
35. The costs of the respondent in the entirety of the claim is some £52,000. There is no detailed breakdown of the same. The suggestion by Mr O'Dair is that half of that total can be attributed to the complaints that had no reasonable prospect of success and therefore seeks a sum in half of that amount adopting a broad brush approach by way of summary assessment. Pursuant to rule 76 the Tribunal would be limited to an award in the sum of £20,000.00 unless the matter was referred for detailed assessment.
36. As to the claimant's means his indication was that he receives £85 per week in Employment Support Allowance, but he was not sure of that figure. We have looked at the government website which suggests £90 per week. There is a possibility that he may be entitled to some other benefits and has made an application for Personal Independence Payment but that has not yet been granted. So, effectively, we are concerned with an individual who is currently in receipt of approximately £90 per week.

37. On the medical evidence that the claimant has produced we are satisfied that it is very unlikely that he is going to be able to return to work in the near future and, if he is able to return to work, we do not consider that it will be at the level that he was previously either by way of the salary that he was receiving or by the amount of hours that he is able to undertake.
38. We have regard to the fact that he is living with a partner. We take into account household income. His partner is working but we understand on a part-time basis only receiving minimum wage. This is a family that has three children, two of which are under 18 and therefore are dependent. One is 19 years old, so now an adult, but we accept what Mr Hussain says that that child is still in full-time education and recognise that with costs of living it is very unusual for an adult of 19 years old to be fully independent of their parents.
39. The claimant confirmed he has credit card debt currently of £3,000. It is a mortgaged property that he resides in. It is understood that the mortgage is currently unpaid albeit that there is some sort of arrangement in place giving him some breathing space in relation to that such that it is not payable at the current time.
40. We also heard from the claimant that he has some savings of £1,500 and we have regard to the same when looking at the amount of costs. We consider that given the limited household income the savings are likely to be required to meet his living costs, at least until the other benefit applications have been determined. However that is an amount in savings that is available to meet any award of costs.
41. Therefore, taking those means into account, we are going to make what we consider to be a limited award in the sum of a of £500.00 towards the respondent's costs having full regard to the claimant's limited means.
42. We consider that award also reflects that not all of the complaints had no reasonable prospect of success, and two of the complaints were legitimately pursued, albeit ultimately unsuccessful. It also takes account of the fact that it was after disclosure that the Tribunal considers the claimant should have been aware that these complaint had no reasonable prospect of success given the documentary evidence to the contrary. This is because the award is significantly less than what was sought such to ensure that no award has been made for costs that would have been incurred in any event.

Approved by:

Employment Judge French

2 February 2026

JUDGMENT SENT TO THE PARTIES ON

12 February 2026.....

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FOR THE TRIBUNAL OFFICE