



EMPLOYMENT TRIBUNALS

Claimant: Mr Ian Langham
Respondent: Norfolk County Council
Heard at: Cambridge Employment Tribunal (in person)
On: 13 July 2026
Before: Employment Judge Hutchings

Appearances

For the claimant: in person
For the respondent: Ms Baker, solicitor

RESERVED JUDGMENT

The respondent's application for costs is dismissed.

REASONS

1. By claim for dated 9 April 2025 the claimant made the following claims and the claimant and one of the claimant's managers, Lee Sargent:
 - 1.1. Unfair dismissal;
 - 1.2. Redundancy payment;
 - 1.3. Notice pay;
 - 1.4. Holiday pay;
 - 1.5. Wages; and
 - 1.6. Sex discrimination.
2. Acas conciliation commenced on 7 March 2025 and a certificate was issued on 12 March 2025. The claimant was employed as a Critical Equipment Technician from 5 August 2024 to 22 November 2024.
3. On 13 August 2025 the tribunal rejected the claim against Mr Sargent as the claimant did not comply with the requirement at Rule 12(1)(c) of the Employment Tribunal Procedure Rules 2024 (the "Rules") as the claim form did not contain an early conciliation number for Mr Sargent. The tribunal also

issued a strike out warning to the claimant in respect of the claim of unfair dismissal as the claimant does not have 2 years continuous service as required by section 108 of the Employment Rights Act 1996.

4. By ET3 and Grounds of Resistance dated 9 September 2025 the respondent defends the claims, applying for all claims for be struck out as the claim form was submitted out of time.
5. At a preliminary hearing before me on 18 May 2026 I made the following judgments:
 - 5.1. The following claims were not presented within the applicable time limit. It was reasonably practicable to do so. The following claims are therefore dismissed:
 - 5.1.1. Notice pay;
 - 5.1.2. Holiday pay; and
 - 5.1.3. Unlawful deduction from wages.
 - 5.2. The complaint of sex discrimination was not presented within the applicable time limit. It is not just and equitable to extend the time limit. The claim is therefore dismissed.
 - 5.3. The claimant complains of unfair dismissal. Section 108 of the Employment Rights Act 1996 requires a claimant to have not less than two years service to make an unfair dismissal complaint. The claimant was employed by the respondent for less than two years. Therefore the claimant is not entitled to bring these proceedings. The claimant has failed to give an acceptable reason, despite being given the opportunity to do so, why the complaint should not be struck out. Accordingly, the claim is struck out.
 - 5.4. The claimant claims the right to a redundancy payment. Section 155 of the Employment Rights Act 1996 says that employees do not have the right to a redundancy payment unless they have been employed for two years or more. The claimant was employed by the respondent for less than two years. Therefore, the claimant does not have the right to a redundancy payment. The claimant was given the opportunity to explain why the complaint the complaint should not be struck out but has not given an acceptable reason. Accordingly, the claim is struck out.
6. At the end of the hearing the respondent made an application for costs of these proceedings. There was insufficient time in the hearing to consider the application and, in any event, I did not have information about the claimant's financial circumstances and I considered if necessary, as the claimant is not represented, for him to have time to consider his response to the application. Therefore, I made case management orders that:
 - 6.1. the respondent set out its application in writing; and

- 6.2. the claimant submit a written response and provide information about his financial circumstances.
7. The purpose of this hearing is to consider the respondent's application that the claimant pays their costs of the proceedings of £1,321.50.
8. I had a 81 page hearing file prepared by the respondents in response to case management orders approved by me on 18 May 2026. I am grateful to both parties for the comprehensive response to these case management orders. At the hearing parties supplemented their written positions as follows:
- 8.1. Ms Baker told me that the respondent is a public body seeking which has a duty to recover money to the public purse. She noted that the application was limited to the costs of the proceedings up to judgment on 18 May 2026 and while the respondent had incurred costs in preparing for the costs hearing, it was not seeking to recover these.
- 8.2. The claimant told me that he did not consider his decision to bring proceedings nasty or accusing, he was pursuing what he considered a genuine case that Mr Sargent had agreed hours to accommodate his child care . At the time of doing so he had a lot going on (he was going through a divorce, selling his home and looking for a new job) and his priority was being a father to his two children. He recounted evidence he gave at the hearing on 18 May 2026 that when he first contacted Acas he had been told that he did not have a case, but was subsequently told by his home insurance legal provider that he did and this was the reason he commenced proceedings late. The claimant said his conduct was not vexatious as, on the back of this advice, he genuinely believed he had a case. He told me bringing the proceedings was not a knee-jerk reaction, he had a lot going on at the time, was trying to find a job to make up for his lost earnings and he thought he had been treated unfairly while in the job, which ended prematurely, he says, during his probation period.
- 8.3. The claimant told me that at the time he submitted the information about his income, he had not worked a full month in his new job so had to estimate his monthly income. In fact, having since worked a full month, it was slightly less than his estimation; he provided the accurate net figure.

The application

9. The respondent applies for a costs order in the sum of £1,321.50 pursuant to Rule 75(1).
10. The application is made on the following grounds:
- 10.1. that the claimant 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 (Rule 74(2)(a); and/or

10.2. any claim, response or reply had no reasonable prospect of success (Rule 74(2)(b)).

11. In summary the respondent submits that:

11.1. Claimant's conduct: the respondent referred me to the case of Carr v Allen-Bradley Electronics Ltd [1980] IRLR 263, submitting that it was held that "costs were properly awarded under this ground where the Claimant's unfair dismissal claim was held to be 'so meritless that it did not leave the starting post'" and that "this case is similarly meritless, and that it simply did not 'get off the ground' as a result". The respondent says that failing to provide the further information ordered by the tribunal at case management stage was also unreasonable behaviour.

11.2. No reasonable prospect of success: the claimant gave evidence under oath that he was fully aware of the three month time limit for claims, and that he knew when he contacted Acas on 7 March 2025 that he was already over that time limit. The claimant accepted there was no good reason for the delay to bringing his claim, confirming he had received legal advice in January 2025 from his home insurance legal team regarding potential claims, and at the time he had access to IT to enable him to submit a claim. The respondent submits that the time issues (of which the claimant was aware from the respondent ET3 and Grounds of Resistance) were not complex issues of law and that the issues were factual, not legal and did not require legal knowledge or skill as the claimant accepted that any claim relating to his employment had a time limit of three months. The Respondent relies on the decision of the Employment Appeal Tribunal in the case of Nicolson Highlandwear Ltd v Nicolson UKEATS/0058/09 in which the EAT found costs were appropriately awarded as it was not a case where the law was difficult, it was instead a case where the claimant found it difficult to understand the fact that his conduct had been wrong. The respondent submits that "the position for the Claimant is even worse in this case – the Claimant admitted that he knew the relevant time limits for the claims he was seeking to bring, he knew he had exceeded these time limits and still he submitted the claims to the Tribunal. No legal skill or knowledge was required to see the weakness in the claim - it is entirely appropriate to make a costs award in such circumstances."

12. In response, the claimant says:

12.1. His conduct: that losing on a preliminary time limit issue does not equate to unreasonable conduct as he believed there was some discretion for the tribunal and that this would be exercised. The claimant references the error that he believes Acas made with the initial advice, telling me that "despite being advised legally that there can be exceptions to late ACAS orders I also believed I had a case due to my original call to ACAS being poorly advised, 3 weeks after termination. Therefore, I misunderstood how the Acas Early Conciliation extension clock worked and was an honest, non-legal mistake, not a deliberate attempt to abuse the court system."

- 12.2. No reasonable prospect of success: the claimant reiterates that while he knew the claim was being submitted late, he believed the tribunal would exercise discretion and extend time and that the timing was complicated by the confusion over the advice he initially received from Acas and subsequent advice from his home insurance legal provider. The claimant submits that testing the time point before an Employment Judge was “a legitimate exercise of access to justice. As an unrepresented Litigant in Person, the Claimant should not be penalized for an honest miscalculation or misunderstanding of complex limitation rules.”

Findings of fact

13. At the hearing on 18 May 2026 I found the claimant to be an honest witness, who acknowledged that he was aware of the fact he was out of time in bringing his claims. His evidence then, consistent with his written submissions for and oral comments at this hearing, was that the guidance he received from Acas did not accord with the subsequent legal advice he received. While he received the latter before the time limit expired, at both hearings he had been consistent in his explanation that this was a difficult time for him, he had lost his job, was going through a divorce, selling his family home and focusing on his two children. As he told me again today, I find that bringing the proceedings was not his priority at this time, despite being aware of the limit on the time. In my findings at the 18 May 2026 hearing, I accepted that he had received conflicting guidance from Acas and his home insurance legal provider.
14. The claim form contains some factual detail of the basis of the claims. The claimant accepts that he did not provide the additional information ordered by the tribunal prior to the case management hearing. While there is a failure to comply with a tribunal order, providing too little (or too much) information about a complain is commonplace for litigants in person as the process and law is unfamiliar to them, hence the tribunal conducting case management hearings for discrimination complaints. Also commonplace is claimant's bringing unfair dismissal claims when they do not have two years continuous service. The tribunal gives claimant's the opportunity to state any reasons which may be relevant before it dismisses an unfair dismissal claim in these circumstances. I find the reason the claimant did not provide this information was his difficult personal circumstances at the time, evidenced by his acknowledgement today that his children, and personal challenges, not the claim, were his priority at that time.
15. I find that a matter of fact the claimant believed, while knowing his claim was out of time, that it was for the tribunal to determine whether the claim was out of time, and consider whether to apply discretion to extend time.

Relevant law

16. 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.

17. 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.

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

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

- 18.2. 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.
19. 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)).
20. 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).
21. 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."
22. 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."
23. The respondent referred me to the case of AQ Ltd v Holden (2012) UKEAT/0021/12/CEA, noting that while the tribunal is bound to take into account that the claimant is a litigant in person when considering whether the relevant test is met, the test remains the same regardless of whether a party is represented.

24. 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).*

25. 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.....*

26. 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.*

27. 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)).

28. 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]).

29. In the case of Mr A E Madu v Loughborough College [2025] EAT 52 noting HHJ Tayler had reviewed the authority for considering a cost application involving a litigant in person. HHJ Tayler emphasised the balancing exercise an Employment Tribunal must undertake when considering whether the threshold test has been met when the Tribunal exercises its discretion as to whether to make an order for costs. Specifically the case concerned a cost application in a claim asserting race discrimination commenced by the claimant acting as a litigant in person and whether the claimant should have realised the claim had no reasonable prospects of success when he obtained legal representation.
30. The Employment Tribunal must determine whether one of the threshold criteria apply, such as the claim having no reasonable prospects of success or that a party has acted unreasonably, and then decide whether to exercise the discretion to award costs: Robinson v Hall Gregory Recruitment Ltd [2014] IRLR 761. These are two separate stages of the decision making process. These are two separate stages of the decision making process.
31. The fact that a party is a litigant in person will often be relevant to determining an application for costs: AQ Ltd v Holden [2012] IRLR 648, EAT [32]: A tribunal cannot and should not judge a litigant in person by the standards of a professional representative. Lay people are entitled to represent themselves in tribunals; and, since legal aid is not available and they will not usually recover costs if they are successful, it is inevitable that many lay people will represent themselves. Justice requires that tribunals do not apply professional standards to lay people, who may be involved in legal proceedings for the only time in their life. As [counsel for the claimant] submitted, lay people are likely to lack the objectivity and knowledge of law and practice brought by a professional adviser. Tribunals must bear this in mind when assessing the threshold tests Further, even if the threshold tests for an order of costs are met, the tribunal has discretion whether to make an order. This discretion will be exercised having regard to all the circumstances. It is not irrelevant that a lay person may have brought proceedings with little or no access to specialist help and advice. 15. The question of whether a complaint had no reasonable prospects of success is wholly objective. However, the fact that a litigant acts in person may be relevant to whether he has acted unreasonably in pursuing the complaint. Whatever the threshold conduct, the fact that a litigant acts in person will generally be relevant to the discretionary question of whether to make an award of costs.
32. In many discrimination complaints the outcome turns on the Employment Tribunal deciding whether the claimant's treatment was materially influenced by the relevant protected characteristic. Much may turn on the performance of the person(s) alleged to have discriminated against the claimant under cross-examination. It can be difficult for a claimant, especially if acting in person, to form a clear view of the likely prospects of success prior to the hearing.
33. In the case of Kesar the Employment Tribunal had found that while throughout the hearing the claimant had given every sign of sincere belief in his allegations of racial discrimination, his motive in bringing these proceedings has been to hit back at his employer over the latter's failure to appoint him as headmaster. The findings in these proceedings is analogous; that while the claimant sought to show the

respondent's conduct was motivated by his religion and disability, the evidence before the Tribunal was that the reason the respondent made the complaints to his employer was his dissatisfaction that the respondents did not agree with his interpretation of his employment contract. As in the case of Keskar, it was my view that the claimant was motivated by resentment of their decision in bringing these proceedings.

34. The EAT in Keskar concluded that the analysis of the Employment Tribunal involved no error of law. However, key to the decision was the fact that the Employment Tribunal concluded that the claim was motivated by animus against the headmaster. The case is not authority for a proposition of law that a claimant's sincere belief that he has been subject to race discrimination is irrelevant to the question of whether costs should be awarded. The challenges that face claimants bringing discrimination claims often will be relevant to a decision whether to award costs.
35. In Saka v Fitzroy Robinson Ltd EAT/0241/00 at paragraph 10 the EAT referred to the "very real difficulties which face a claimant in a discrimination claim", that there is often a lack of overt evidence and so "it may be and often is very difficult for the claimant to know whether or not he has real prospects of success until the explanation of the employer's conduct which is the subject of complaint is heard, seen and tested". See also the comments of Cox J in Oko-Jaja v London Borough of Lewisham, UKEAT/417/00 at paragraph 20 to 21.

36. HHJ Tayler noted that:

"None of this means that litigants in person bringing complaints of discrimination are immune from costs orders, but the difficulties that can face claimants bringing discrimination complaints, and the specific challenges that face litigants in person, will often be relevant to deciding whether to award costs.

Advancing a complaint that has no reasonable prospects of success and/or acting unreasonably in bringing or proceeding with such a complaint can result in strike out. The approach adopted to strike out in discrimination claims is potentially relevant when applying the similar test for costs, including the analysis by Lord Steyn in Anyanwu v South Bank Student Union [2001] UKHL/14, [2001] ICR 391: Discrimination cases are generally fact-sensitive, and their proper determination is always vital in our pluralistic society. In this field perhaps more than any other the bias in favour of a claim being examined on the merits or demerits of its particular facts is a matter of high public interest.

Where an Employment Tribunal exercises the discretion to award costs because of unreasonable conduct it is not required to precisely align the unreasonable conduct with the costs caused by it, but it is generally necessary to have regard to the nature, gravity and effect of the unreasonable conduct: McPherson v BNP Paribas (London Branch) [2004] ICR 1398, CA.

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. The overriding objective of the Employment Tribunal is also relevant, and I remind myself that I must determine this application to reach a decision that is fair and just to both parties in all the circumstances of the case.

Conclusions

38. I have applied these legal principles to decide the respondent's application for costs.
39. 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"*.
40. The application was made immediately after I gave oral judgment on 18 May 2026. The application is in time.
41. 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:
- 41.1. First, a Tribunal must ask itself whether a party's there are grounds to make a costs order and
 - 41.2. Second, if so, it must go on to ask itself whether it is appropriate to exercise its discretion (in favour of awarding costs against that party; and
 - 41.3. Third, if discretion is exercise, the amount of the award.

Are there grounds to make a costs order against the claimant?

Conduct

42. The respondent is relying on 2 parts of Rule 74 in this application.
- 42.1. The claimant acted unreasonably in both the bringing of the proceedings and his conduct (Rule 74(2)(a); and/or
 - 42.2. The claim had no reasonable prospect of success (Rule 74(2)(b)).
43. 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)).

44. In determining whether in bringing the claim the claimant's conduct was unreasonable, I direct myself 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.
45. My findings lead me to the conclusion that the claimant's conduct was not unreasonable in all the circumstances. The claimant accepted he was aware of the time limits, but considered this was a matter for the tribunal to assess, given it had some discretion to do so. There is nothing unreasonable about that. The claimant has been very straight forward in sharing his personal challenges at the time of bringing his claim and I have accepted these explanations. His conduct in bringing the proceedings late was not unreasonable, in my judgement, but a consequence of a difficult time in his life. As a result of these factors, and my decision, he has not been able to pursue the claims as I assessed it was reasonably practicable to bring the claim, and, it was not just and equitable to extend time for the discrimination complaint. However, as a matter of fact and law, that is a different threshold to exhibiting unreasonable behaviour. Also relevant is my finding that the guidance he received from Acas at the outset of his enquiries about bringing a claim did not accord with the subsequent legal advice he received.
46. The claimant also trusted in the tribunal system for an assessment of whether it was just and equitable to extend time. That he could not persuade me it was (based on the facts before me at that hearing) does not equate to his behaviour being unreasonable. He exercised his right to judicial determination of a legal test, was open with the facts in his evidence and did not succeed. That is not unreasonable behaviour. It is the system operating as it should.
47. In reaching this decision, I am mindful that in AQ Ltd v Holden [2012] IRLR 648, 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. I have taken into account the fact that the claimant was represented when the claims were presented and prior to the hearing and not represented at the hearing.

48. I conclude that the claimant's behaviour was not unreasonable.

Prospect of success

49. 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:

49.1. Objectively, does the claim have no reasonable prospect of success;

49.2. If so, should I exercise the tribunal's discretion as to whether or not to award costs; and

49.3. if discretion is exercised in favour of making a costs order, the I must make an assessment of the sum to be awarded.

50. I have found that the claimant was aware that his claim was out of time, was in receipt of advice that there may be merit to some of his claims, and that he was seeking to rely on the tribunal's discretion to extend time to allow him to pursue his complaints. Given that discretion, it does not follow that the claims had not reasonable prospect of success. Had I extended time there would have been a further case management hearing to give the claimant, as a litigant in person, the opportunity to explain why he connected the treatment about which he complained to his sex.

51. In reaching this decision I am mindful of the analysis of Lord Steyn in Anyanwu v South Bank Student Union [2001] UKHL/14, [2001] ICR 391:

"Discrimination cases are generally fact-sensitive, and their proper determination is always vital in our pluralistic society. In this field perhaps more than any other the bias in favour of a claim being examined on the merits or demerits of its particular facts is a matter of high public interest."

52. I consider this guidance applies to an assessment of whether it is just and equitable to extend time in a discrimination case. It may have been the case that at the hearing he could have persuaded me of facts relevant to an extension of time. That I did not consider his personal circumstances, on balance, sufficient, does not equate with a conclusion the claims had no reasonable prospect of success.

53. For these reasons, objectively considering the information before me, I conclude that it is not possible to say that the claimant knew his claims had no reasonable prospects of success pursuant to rule 74(2)(b) from the outset.

Stage 2: should I make a costs order?

54. As the respondent has failed to satisfy stage 1 of the test I do not need to consider whether to exercise my discretion to make a costs order.

55. However, I make the following observations about this consideration. Even if the threshold tests for an order for costs are met, the tribunal still has discretion whether to make an order. That discretion should be exercised having regard to all the circumstances.

56. Ms Baker told me the respondent has a duty to recover money to the public purse; it does. It is appropriate for a litigant in person to be judged less harshly in terms of his or her conduct than a litigant who is professionally represented. I am mindful of the EAT's guidance in AQ Ltd v Holden 2012 IRLR 648, EAT, that I should not judge a litigant in person by the standards of a professional representative and that lay people are likely to lack the objectivity and knowledge of law and practice

brought to bear by a professional legal adviser. Even if I considered the claimant's conduct unreasonable or prospects of success non-existent, I do not consider this is a case where discretion should be exercised. The claimant has been very open with the tribunal acknowledging he knew he was out of time. I have found that he received conflicting advice which was a factor in the delay, as were his personal circumstances at the time and that he was relying on the tribunal to exercise its discretion to extend time.

57. In taking account of the totality of the circumstances, I consider these factors relevant to Rule 3, and I am persuaded that it would not be fair and just to exercise my discretion in any event.

Stage 3: amount of the costs order

58. Given my decisions above, it is not necessary for me to make an assessment as to amount.

Approved by:

Employment Judge Hutchings

13 July 2026

Judgment sent to the parties on:

6 August 2026

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For the Tribunal:

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