



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
MS L FOSTER

AND

Respondent
REDLAND PRIMARY CARE

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 6TH JULY 2026

**EMPLOYMENT JUDGE MR P CADNEY
(SITTING ALONE)**

MEMBERS:

APPEARANCES:-

FOR THE CLAIMANT:- IN PERSON

FOR THE RESPONDENT:- MR C USHIEAGU

JUDGMENT

The judgment of the tribunal is that:-

- i) The claimant's claim for the failure to permit her to be accompanied at a disciplinary meeting pursuant to s10 Employment Relations Act 1999 is dismissed on withdrawal;
- ii) The claimant's application for a preparation time order is dismissed
- iii) The claimant is ordered to pay the respondent's costs of £644.

Reasons

Background

1. By a claim form submitted on 30th October 2025 the claimant brought a sole claim for the maximum award of damages of two weeks wages (£630) for the failure to permit her to be accompanied at a disciplinary hearing (s10 ERA 1999). She, in addition, sought further damages for stress making the total sum claimed £1,500 although those claims and those sums are not in fact recoverable in relation to the sole claim advanced.
2. The factual allegation on which the claim is based is that she was called into a meeting at short notice on 18th September 2025. She was not informed that it was a disciplinary meeting or that she had a right to be accompanied. During the meeting she requested to be accompanied but the request was refused; and at the conclusion of the meeting she was dismissed.
3. The initial response was initially rejected on the basis it had not been submitted by one of the prescribed methods; but that decision was subsequently reconsidered and the response accepted. The response asserted that the case fell within the exceptions to the requirement within s10 ERA 1999, in that it was not a disciplinary hearing within the meaning of the section. The case was then listed for hearing.
4. On 25th June 2026 the claimant informed the tribunal that she had received a cheque in the sum of £630 from the respondent. The substantive claim has now been withdrawn and is dismissed following the payment by the respondent of £630, which is the maximum that the claimant could have received had she been successful.
5. However the case has proceeded to this hearing to deal with the applications set out below.
6. Costs / Preparation Time Order Applications – As set out below both parties have made applications for a costs order / preparation time order against the other, pursuant to rule 74 (ET Rules of Procedure 2024- The relevant parts of which are set out below).

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.

7. Respondent's Application - On 10th June 2026 the respondent wrote stating that:

We write in relation to the attached correspondence from the tribunal dated 9.6.26. Please see attached correspondence between the parties and attached cost schedule. The Respondent has since 15.5.25 proposed to resolve this dispute and make payment as claimed by the claimant of £630.00 (see attached email). The Claimant disagreed with the draft COT3 terms on 10.6.26 and refused to send her bank details for payment even without a COT3 on 15.5.25. The respondent has done everything possible to settle this dispute without wasting court time and resources but unfortunately the claimant has gone the extra mile to meet the criteria set out in r74(2)(a) in the way she is conducting proceedings.

We note that the tribunal is considering strike out of the response and since the Respondent does not contest the claims, this seems pragmatic. Even if the response is struck out, it seems to me that a remedy hearing would be required to determine whether the tribunal decides to award up to 2 weeks' pay. This means that the tribunal will be spending time at a remedy hearing for a claim which could have been settled. The respondent has offered to pay the maximum award pursuant to s11(3) ErelA 1999– 2 weeks' pay, with and without a COT3. The claimant has refused both methods of resolving the dispute, which is highly unusual, unreasonable, and vexatious.

Per Yerrakalva v Barnsley MBC [2011] EWCA Civ 1255, "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." (Paragraph 41.). The respondent submits that the Claimant's unreasonable behaviour could not be clearer. There is no plausible reason for C to refuse to provide details for payment to be made to her in the sums she claimed. She is also aware that she cannot be awarded any more than she has been offered . What is staggering is that the Claimant in her email dated 15.5.26 at 15;28 sought a "commercial premium" (i.e, more than the

maximum remedy for the claim she made) to sign the COT3 which suggests that even the COT3 terms were not a problem but the Claimant's vexatious behaviour.

In sum, the Claimant has had two options, conclude settlement through a COT3 or without one and the claimant refused both. We invite the tribunal to list a hearing for 3 hours to determine remedy and the Respondent's application for costs made herein [costs claimed from 15.5.26].

8. Accordingly the respondent sought its cost from 15th May 2025. The amount sought is £644 as set out in the Schedule of Costs. In summary it relies on the claimant's unreasonable/vexatious behaviour:
 - i) In the refusal to accept in settlement, with or without a COT3 agreement, the maximum sum that could be awarded in her favour;
 - ii) The demand for a "commercial premium" in excess of the maximum award to sign a COT3 agreement.
9. The claimant opposed the application in the following terms:

I respectfully oppose the application.

The Respondent's own attachments demonstrate that my position throughout the conciliation process was not a refusal of settlement, but a willingness to settle subject to agreement on the contractual terms.

The correspondence relied upon by the Respondent records that:

- *ACAS informed the Respondent on 19 May 2026 that I had provided provisional agreement to the settlement figure of £630, subject to agreement of the draft COT3 terms;*
- *I raised specific concerns regarding the proposed confidentiality, non-disparagement and enforcement provisions;*
- *I proposed alternative wording intended to clarify and protect my separate rights and activities as a former patient of the Respondent GP practice, including existing complaints, reviews and publications;*
- *I repeatedly confirmed that my objection related to the contractual terms and not the monetary figure itself;*
- *I confirmed that I would provide my bank details upon agreement being reached.*

The Respondent's application characterises my conduct as a refusal to settle. Respectfully, the correspondence demonstrates something entirely different.

My position remained consistent throughout:

1. *I accepted the proposed settlement figure of £630 in principle.*

2. I sought clarification and amendment of the contractual obligations contained within the proposed COT3.

3. When the Respondent later suggested payment without a COT3, I sought clarification regarding the legal effect of that proposal and whether any obligations, restrictions or terms would remain enforceable. As a litigant in person, I sought assistance through ACAS to understand the legal implications before making a decision.

Seeking clarification regarding the legal consequences of a settlement proposal is not unreasonable conduct.

I therefore reject the Respondent's assertion that I acted vexatiously or unreasonably

By an email later the same day she added:

Further to my email sent today in response to the Respondent's application for costs, I wish to make one brief supplementary point.

The Respondent's representative asserts that my reference to a "commercial premium" in correspondence dated 15 May 2026 demonstrates vexatious conduct. Respectfully, this is not an accurate characterisation of my position.

My email of 15 May 2026 expressly stated that I was prepared to settle the claim immediately for the statutory sum of £630 under "Option A" if the proposed confidentiality and non-disparagement provisions were removed.

The reference to a commercial premium arose only under "Option B", namely if the Respondent wished to retain contractual confidentiality and non-disparagement obligations extending beyond the remedy available from the Employment Tribunal itself.

My position was therefore not that I required more than the statutory award in order to settle. Rather, it was that if the Respondent wished to obtain additional contractual protections beyond the Tribunal's jurisdiction, those provisions represented separate contractual benefits for which additional consideration would ordinarily be required.

I respectfully submit that this was a legitimate settlement negotiation position and does not evidence unreasonable or vexatious conduct.

10. Claimant's Application / Preparation Time Order – On 14th June the claimant submitting a Schedule of Preparation Time. It is claimed that the hours spent are time not spent directly on preparation for the determination of the substantive issue; but spent on dealing with the respondent's non-compliance with the case management directions and the settlement discussions.

11. The two applications require the examination of three underlying factual assertions:

- i) Whether the claimant acted unreasonably in failing promptly to accept the offer of settlement which would have brought the claim to an end;
- ii) Whether the respondent acted unreasonably in relation to the settlement negotiations;
- iii) Whether the respondent acted unreasonably in failure to adhere to the case management directions.

12. Subject to the answers to those factual issues the tribunal need to consider:

- i) Whether the threshold for making an order for costs/preparation time has been reached;
- ii) If so whether it is appropriate to exercise the discretion to make a costs order / PTO;
- iii) If so in what sum.

13. I will deal specifically with each of the applications as set out below but in my judgement I have to bear in mind the following factors in considering the various applications:

- i) The case was extremely simple;
- ii) From the claimant's perspective the only issue she had to consider, and all she had to prove was that she had not been permitted to be accompanied at the meeting, which was not in dispute. There was essentially nothing for her to do to prove her claim, other than consider any documents and/or the witness evidence the respondent sought to adduce to advance its defence.
- iii) From the respondent's perspective, it had to adduce evidence that the meeting did not fall with the definition of a "disciplinary hearing" within the meaning of s10 ERA 1999;
- iv) Subject to that the only remaining issue was how much to award if the claimant was successful, with maximum being two weeks' pay;
- v) In determining the various applications one issue will, in the light of the above, be how much of work claimed was actually necessary in any event even if in principle the threshold has been crossed.

14. Breach of Case Management Orders – The first allegations chronologically relate to the claimant's application to for a PTO arising out of the respondent's failure to comply with CMOS. The notice of hearing was sent on the 3rd April 2026 notifying

the parties of the final hearing on 3rd July 2026 and setting out at the following case management orders:

- i) 10th April 2026- the claimant to set out the remedy she was seeking;
- ii) 17th April 2026- the parties to make mutual disclosure of relevant documents;
- iii) 24th of April 2026- the parties to agree a bundle of documents limited to 50 pages;
- iv) 1st May 2026 - The respondent was produce was to produce an electronic version of the bundle;
- v) 8th May 2026 - The parties were to exchange witness statements;
- vi) 26 June 2026- The respondent was to supply a copy of the bundle and witness statements to the tribunal

15. Disclosure - On 17th April 2026 the claimant notified the tribunal that the respondent had not complied with the disclosure directions. On Monday 20th April the respondent replied indicating that they hoped to be able to comply by close of business the following day. The claimant replied the same day stating that the respondent was in “flagrant breach” of the order, and formally applying for an unless order against the respondent; notifying the respondent that unless it complied by midday the following day she would seek strike out order for non-compliance. She in fact made an application for an unless order and or strike out order the same day. The disclosure documents were sent to the claimant on 21st April 2026.

16. Bundle – The parties were not able to agree a bundle within the fifty page limit, and by an order of 29th April 2025 EJ Rayner agreed to a proposal for a core and a supplementary bundle

17. Witness Statements – The respondent sought to agree a variation to the date for exchange of witness statements to 29th May 2026 on the basis that that would leave sufficient time for preparation for the final hearing, to which the claimant objected. Before the tribunal had given directions on the application, on 19th May 2026 the claimant sought a further unless order in relation to exchange of witness statements, seeking their immediate exchange failing which the response would be struck out. On 30th May the claimant sought a strike out order on the basis that the respondent had not exchanged witness statements on 29th May (it is notable that in this application the claimant did not make any reference to the settlement discussions which had been ongoing since 15th May). On 5th June 2026 she re-iterated the application for a strike out order.

18. The respondent was asked for its comments by an order of 9th June of REJ Pirani. Its reply on 10th June is the costs application set out above, which in essence contends

- that it had on 15th May it had offer to settle with or without a COT3 agreement for the whole sum in dispute.
19. In her preparation time order the claimant seeks £495.44 representing 11.26 hours preparation time in respect of the sequence of events outlined above.
20. Although it does not explicitly state the basis of the application it would appear to fall under r74(2)(b) and/or r74(3). The latter simply requires a breach of an order to trigger the question of whether the discretion to make a costs order should be exercised.
21. In my judgement it must be borne in mind that the parties have a duty to co-operate, and that both an unless order or strike out order are draconian sanctions, that neither will be made simply for breach of a case management order, and will not be made unless the tribunal concludes that a fair trial is no longer possible. Given the simplicity of the issues, and even allowing for the fact that the claimant was a litigant in person, the sequence of applications for unless and/or strike out orders simply because the date for compliance had passed is remarkable.
22. It is notable that the first application was made at a time when she knew the respondent was proposing to comply by the following day, and it is not all clear why she thought the application was appropriate. Similarly the latter applications made no mention of the fact that she had already been offered the full sum she could achieve in settlement, which is obviously relevant as it demonstrates that the respondent is behaving reasonably, and should have been disclosed to the tribunal as a relevant consideration in deciding whether or not to make the order.
23. In the circumstances, although the respondent was in breach of the disclosure order by a few days; and as the dispute over the bundle had to be resolved by the tribunal; and given that the failure to exchange witness statements was entirely explained by an offer of complete settlement, it would not in my judgement be appropriate to exercise my discretion to make a preparation time order in respect of this part of the claim.
24. Settlement Negotiations – Claimant's PTO Application -The claimant has also sought a PTO in the sum of £802.12 (18.23 hours) relating to the settlement negotiations. The basis of this application is not at all clear. Given that the respondent was offering to pay her the whole sum she could achieve by the litigation either with or without a COT3 agreement at her own choice, it is very hard to see how they could be held to have acted unreasonably or otherwise fall within r 74 (2)(b).
25. The claimant appears to suggest that they had the obligation to explain her any ramifications of either settling via a COT3 agreement, or by simply paying her the maximum amount without an agreement. Given that the latter would have completely resolved the claim, and self evidently would not involve her in any future obligation, or place any restriction on her going forward it is extremely hard to see what more they

could reasonably be required to do, and I cannot see any basis for making a PTO in respect of the settlement negotiations.

26. In my judgement there is simply no basis for holding that there is any conduct on the part of the respondent that would fall within the provisions of r 74(2)(b) and here is no basis on which a PTO could be made.

27. Settlement Negotiations – Respondents Cost Application - The respondents costs application is based on the following sequence of emails:

- i) 15th May 2.35 p.m. – The respondent offered to settle for £630.00, the maximum award, and contended that the claimant had sought a further £1,000 if the respondent sought to avoid a public judgement, which they described as vexatious.
- ii) 15th May 2.43 p.m.- The claimant replied stating that her conduct was not unreasonable; that she knew that the tribunal could not award more than £630.00, but that any further contractual terms in a COT3 agreement (confidentiality / non-disparagement) could properly be reflected in a further payment.
- iii) 15th May 2.56 p.m. – The respondent replied stating that the proposed COT3 simply contained the standard terms.
- iv) 15th May 2.56 p.m. – The claimant replied rejecting settlement on the COT3 terms.
- v) 15th May 3.11 p.m. – The respondent sought confirmation that the claimant was rejecting the settlement offer.
- vi) 15th May 3.28 p.m. – The claimant replied offering to settle on two alternative bases; firstly the payment of £630 with a COT3 agreement from which the confidentiality/ non-disparagement terms were removed; or secondly the payment of £630 with a COT3 agreement, and the payment of a "commercial premium" for the inclusion of the clauses.
- vii) 15th May 5.00 p.m. – The respondent sought the claimant's bank details in order to pay the sum of £630.00 without a COT3 agreement.
- viii) 15th May 5.15 p.m.– The claimant agreed to accept £630 once she received written confirmation that it was not conditional on signing a COT3 agreement or any post settlement restrictions.
- ix) 15th May 5.15 p.m.- The respondent replied repeating the request for the claimants bank details to make the payment if she did not wish to do so on terms.

28. The respondent makes the simple point that by the conclusion of this correspondence it had offered simply to pay the claimant the maximum she could be awarded without requiring the protection for itself of a COT3 agreement. Whilst it

contends that it was wholly unreasonable to seek further payment of a “commercial premium” over and above the maximum she could be awarded, the fundamental point was that by 5.15 p.m. on 15th May 2026 the respondent had agreed in writing to the claimant’s proposed terms to pay her without any further agreement or terms attached. Put simply, if it straightforwardly paid the money without condition, there were by definition no conditions attached to the payment. Thus the claimant knew, at the latest by the end of the day on 15th May 2026 that the respondent would make an unconditional payment to her if she simply provided her bank details. That the claimant chose not to supply her bank details immediately and end the litigation is incomprehensible and unreasonable and/or vexatious within the meaning of r74.

29. The claimant’s case is essentially that until she received the cheque on 25th June 2026 that she had not received any express confirmation that payment of £630 was not conditional upon signing a COT3 agreement and/or that no confidentiality or non-disparagement or other post settlement restrictions would apply in the absence of a signed agreement and/or was therefore unconditional.

30. The difficulty for the claimant is that the final email of 15th May 2026 expressly stated:

Hi Lucy,

Once again, you have failed to respond to the email below.

As stated below, if you are not happy with the terms, please provide your bank details so my client can make payment.

You can then proceed to write to the tribunal withdrawing the claim (on receipt of payment) without signing anything.

If you fail to provide your bank details for payment to be made, we will refer this chain of emails to the tribunal on the issue of costs.

(My underlining)

31. This was in response to the claimant’s previous email in which she stated:

As previously stated once I receive written confirmation that payment of the £630.00 is not conditional upon signing the draft COT3 and that no confidentiality, non-disparagement or other post settlement restrictions will apply I will accept the offer and agree to withdraw the claim following receipt of payment....

32. The respondent submits that it had done exactly as it was asked. As the underlined passages above confirm the offer was to pay the sum unconditionally without requiring the claimant to sign any form of agreement on any terms. It had not required the claimant to enter into a COT3 or any other agreement and had simply asked for her bank details to make the payment without any terms attaching to the payment.

33. This case is not dissimilar to *Rose v Jet2.com Ltd ET Case No.2404472/18* in which an offer of the maximum award for the claim was rejected and a costs application was subsequently successful. That is only a first instance decision and not binding on me, and each case necessarily turns on its own facts. However, in my judgement the position in this case is very similar. The respondent offered the maximum sum that could be awarded. Had the claimant proceeded to hearing she might have received nothing, or a smaller sum. There was therefore, on the face it absolutely no reason to reject the offer; particularly when it was confirmed that there no terms attached. Had she supplied her bank details on 15th May 2026 no further costs would have been incurred.

34. In my judgement the failure to do so is clearly unreasonable behaviour and crosses the threshold for making an order for costs. In deciding whether to exercise my discretion to do so , I bear in mind that the respondent's costs are relatively modest and not in my judgement excessive. It has not been suggested that there is any financial impediment to making the payment; and it corresponds very closely to the amount already paid to the claimant.

35. It follows that I will make a costs order in the sum of £644.00 in favour of the respondent.

Judgment approved by EJ Cadney

EMPLOYMENT JUDGE CADNEY

Dated: 31st July 2026

**Judgment Sent to parties on
27 August 2026**