



EMPLOYMENT TRIBUNALS

Claimant: Miss Zoe Rees

Respondent: (1) Lifeways Community Care Limited
(2) First Choice Medical Solutions Limited

Heard at: On the papers; Nottingham **On:** 3 September 2026

Before: Employment Judge Price

COSTS JUDGMENT

1. The First Respondent's application for costs is refused.

REASONS

Findings of fact

2. The Claimant presented her claim on 29 December 2025. The nature of the claim was perhaps not entirely clear from the claim form, but appears to me to have been principally one of unfair dismissal relating to an ostensible relevant transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (along potentially with wages and redundancy payment claims). Prior to issuing her claim, the Claimant appears to have engaged in early conciliation via ACAS with both Respondents. The claim form states both Respondents dispute being liable for her ostensible dismissal relating the transfer.
3. The Tribunal accepted that claim and, on 26 January 2026, listed the matter for a one-day final hearing on 15 June 2026 and set case management orders to prepare for that hearing.

4. Due to what appears to have been an administrative error within the Tribunal process, a further notice of claim was sent to the Respondents. That notice maintained the same final hearing date, but gave different (slightly later) dates for case management orders.
5. The First Respondent states the Claimant has not complied with any of those case management orders (specifically, she did not provide a schedule of loss, exchange relevant disclosure or exchange witness statements). Having considered the Claimant's response to the application, which does not dispute that contention, I find the Claimant did not comply with those orders.
6. The First Respondent (which in this case would have been the alleged transferor) filed its response, within time, on 4 March 2026. That response, subject to requesting better particulars from the Claimant about her claim(s), denied liability. It accepted a relevant transfer had taken place (by reason of a Reg 3(1)(b) service provision change). It acknowledged, prior to the transfer, that the Claimant had not been included in the ELI first provided to the Second Respondent. It pleaded that this was an administrative error which had been corrected prior to transfer. In essence, its primary case was that there was a relevant transfer of the Claimant's employment to the Second Respondent on 27 October 2025 and so it had not dismissed the Claimant prior, on or after that date.
7. The Second Respondent (the putative transferee) did not file a response to the claim. It has not, seemingly, taken any active part in the claim.
8. On 2 April 2026 the Tribunal wrote to the parties stating that, the Second Respondent having not presented a response, it may only participate in any hearing to the extent permitted by the Tribunal.
9. Also on 2 April 2026, in light of the First Respondent's request that the Claimant better particularise her claim, The Tribunal wrote to the parties stating that it should, in the first place, and in plain language, ask the Claimant to provide that further information. It does not appear from the information available to me that that was done.
10. On 1 June 2026 it appears (though I have not seen the actual letter/email) the First Respondent wrote to the Claimant stating that if the Claimant did not confirm that same day when/if she would be exchanging witness statement, it would make an application for an unless order. I am not certain what the 'unless' consequence was stated to be in that correspondence, but I suspect it was in the same terms as the First Respondent

then did in fact write to the Tribunal – namely that unless the Claimant exchange statements (and send a schedule of loss) her claim be dismissed.

11. Also on 1 June 2026 the Claimant, using the Tribunal portal, withdrew her claim. The Claimant gave reasons for doing so, which included the litigation causing her significant anxiety and adversely affecting her mental health and wellbeing. I find the Claimant had read and reviewed that correspondence before issuing her notice as, in it, she states ‘I understand why the Tribunal needs to issue the Unless Order...’. I find the reason for the Claimant withdrawing her claim was the reason she gave, concerning her mental health, in her notice. I find the timing of the notice was prompted by the First Respondent warning her that it would make an application for an unless order.
12. I also find, given the content of the costs application, that the Claimant emailed the First Respondent on 1 June 2012, notifying that she had withdrawn her claim, but also accept and find that that email was not seen until 15 June 2026 as it directed to a ‘junk’ email folder.
13. On 2 June 2026 the First Respondent wrote to the Tribunal. In that letter the First Respondent notes that witness statement were ordered to be exchanged by 20 April 2026 and that the First Respondent had written to the Claimant twice to ascertain if the Claimant was in a position to so exchange. It does not say whether those requests were made before or after the 20 April 2026 date. The costs application later made by the First Respondent states that it wrote to the Claimant on 30 April 2026 and 28 May 2026 ‘regarding witness statement exchange’ and then again on 1 June 2026 (as well as on 15 April 2026 concerning the bundle and seeking documents from the Claimant).
14. The letter makes an application. The application was that unless the Claimant provide her witness statement and schedule of loss within 3 days of a tribunal order to that effect, her claim be dismissed. I find that the First Respondent must have been unaware, before making that application, of the Claimant having issued a notice withdrawing her claim the day prior.
15. Further, in that letter the First Respondent notes that witness statement were ordered to be exchanged by 20 April 2026 and that the First Respondent had written to the Claimant twice to ascertain if the Claimant was in a position to so exchange. It does not say whether those requests were made before or after the 20 April 2026 date.

16. On 12 June 2026, the Claimant, this time through both the portal and via email, again issued notice of withdrawal of her claim. The reasons were identical to those given on 1 June 2026.
17. The Tribunal wrote to the parties on 12 June 2026 acknowledging receipt of the notice to withdraw the claim and stating that a judgment dismissing the claim would follow.
18. The final hearing listed for 15 June 2026 did not, therefore, take place.
19. It appears the Claimant issued a further notice withdrawing her claim on 14 June 2026.
20. A judgment dismissing the claim was sent to the parties on 18 June 2026.
21. On 26 June 2026 the First Respondent made the costs application I am determining.
22. On 26 July 2026 the Tribunal wrote the Claimant and Second Respondent requiring them to provide representations as to the application within 7 days. The Tribunal also asked all parties to state if the application could be dealt with on paper or whether any party requested that a hearing take place.
23. On 27 July 2026 the Claimant requested a 14 day extension to provide her representations. The reason for the request was stated to be that the Claimant had 'ongoing mental health challenges' and that the extension would allow her to 'properly compile my financial disclosures and secure witness statements regarding my health condition at the time of my withdrawal'.
24. Despite that request, the Claimant did in fact provide her representations in response to the application on 28 July 2026. I have read those representations.
25. Also on 28 July 2026 the First Respondent stated that it requested the application be dealt with on the papers.
26. On 17 August 2026 the Tribunal wrote to the parties again concerning whether the matter could be dealt with on the papers (noting the First Respondent's request for it to be determined in that way which it thought appropriate). The Claimant was given 7 days to state if she wished for a hearing. No request by the Claimant would mean that the Tribunal would deal with the application on the papers. No response (from the Claimant) to that letter has been received by the Tribunal.

27. On 2 September 2026 the Tribunal listed the matter to be dealt with on 3 September 2026 on the papers.

Relevant Legal Principles

28. Pursuant to ETR 50; “where a party advancing a claim informs the Tribunal, either in writing or in the course of a hearing, that their claim, or part of it, is withdrawn, the claim, or part, comes to an end, subject to any application that the party responding or replying to the claim may make for a costs order, preparation time order or wasted costs order”.
29. The withdrawal takes effect on the date that the claimant informs the tribunal, either orally at a hearing or in writing, of withdrawal; **Campbell v OCS Group UK Ltd and anor** 2017 ICR D19, EAT.
30. I have considered Part 13 of the ETR 2024.
31. I have considered the Presidential Guidance on Case Management Note 7.
32. I have considered the authorities cited to me by the parties (which in this case was the Claimant and the First Respondent only) and the following authorities.
33. Costs in the ET are the exception rather than the rule; **Yerrakalva v Barnsley Metropolitan Borough Council and anor** [2012] ICR 420. However, the facts of a case need not be exceptional for a costs order to be made. The question is whether the relevant test is satisfied; **Vaughan v London Borough of Lewisham and others** [2013] IRLR 713.
34. As stated in **Willis v Gwb Harthills Llp** [2025] EAT 79, the application of these rules can be split into three stages:
- a. Stage 1: is there conduct that could warrant making a costs order (“threshold conduct”)
 - b. Stage 2: if so, should an award of costs be made (“the discretionary decision”) – the Employment Tribunal may have regard to ability to pay at this stage
 - c. Stage 3: if so, what amount of costs should be awarded (“the quantum decision”) – the Employment Tribunal may also have regard to ability to pay at this stage

35. In determining whether to make an order on the grounds of unreasonable or vexatious conduct, a tribunal should take into account the 'nature, gravity and effect' of a party's unreasonable conduct per **McPherson v BNP Paribas (London Branch)** [2004] ICR 1398, CA, whilst ensuring it does not lose sight of the whole picture of the case; **Yerrakalva v Barnsley Metropolitan Borough Council and anor** 2012 ICR 420, CA. 'Unreasonable' has its ordinary meaning. It is not equivalent to 'vexatious'; **Dyer v Secretary of State for Employment** UKEAT/183/83).
36. The withdrawal of proceedings is not of-itself unreasonable conduct. The claimant's conduct overall must be considered; **McPherson**.
37. Costs awards are compensatory, not punitive; **Lodwick v Southwark London Borough Council** [2004] EWCA Civ 306.
38. If a Tribunal decides to take into account ability to pay, it should set out its findings about ability to pay, say what impact this has had on its decision whether to award costs or on the amount of costs, and explain why; **Mark Ward v Dimensions (UK) Ltd** [2022] EAT 159. Parties may use a county court EX140 form to provide information as to means; **Oni v NHS Leicester City (Formerly Leicester City Primary Care Trust)** UKEAT/0144/12/LA.
39. The fact that a party is unrepresented can also be a relevant consideration in deciding whether to award costs against him or her; **AQ Ltd v Holden** [2012] IRLR 648.
40. I note the caution Mr Justice Burton urges on the Tribunals, in **Salinas v Bear Stearns** [2005] ICR 1117, when determining costs applications, to bear in mind that costs are the exception, that it is, ordinarily, a costs free jurisdiction and that improper awards of costs can have a deterrent effect on a parties ability to litigate and advance its case.

Submissions

41. I have read the First Respondent's application and submissions in support.
42. I have read the Claimant's submissions in opposition to the application.
43. The Second Respondent has made no representations about the costs application.

Reasons and conclusions

44. I refuse the application for costs against both the Claimant and Second Respondent for the following reasons.

Claimant

45. I find that the Claimant has not acted unreasonably in the conduct of the proceedings, thereby not engaging in 'threshold conduct'.

46. It is erroneous to draw analogy with the Civil Procedure Rules and conclude that the act of withdrawing one's claim is, itself, unreasonable conduct within the meaning of the ETRs; **McPherson**. However, as also recognised in **McPherson**, adopting a practice which encouraged the pursuit of 'speculative' claims to the final moment and then abandoning them should not be without costs risk. I must, rather, consider the wider conduct of the Claimant leading to the decision to withdraw her claim and assess that entire conduct, including the decision to, and timing of, the withdrawal of the claim.

47. If, as also observed in **McPherson**, a Claimant withdraws their claim, that can lead to costs savings and may reflect the 'dawn of sanity' – sensible decision making during litigation within the Tribunal system should not be penalised or discouraged by the making of costs orders.

48. First, the Claimant withdrew her claim on 1 June 2026, not 12 June 2026. The withdrawal took effect that day; **Campbell**. That decision was seemingly prompted by, but I consider not solely caused by, the First Respondent's correspondence to her that same day warning that it would apply for an unless order should the Claimant not confirm readiness to exchange (at least) witness statements.

49. If a party reaches a stage of litigation in the employment tribunal whereby the impact that it has on their health is such that they do not feel capable of proceeding, as I have found in this case, I consider it is not unreasonable for that party to then withdraw from the proceedings. Again, the consequential effects of discontinuing a claim within the civil courts, triggering a costs order, is not to be applied within the Tribunal process – unless wider conduct establishes that that should be so. Imposing a costs order on the

case before me would, in my view, risk creating the deterrent effect warned against in **Salinas**. The prompting of the Claimant to take that steps reflects the 'dawn of sanity' point made in **Mcpherson**.

50. Second, that notice was issued 2 weeks prior to the final hearing. It was not within 7 days of the final hearing and so I do not consider it is analogous to a postponement of a final hearing under ETR 74(2)(c).
51. As the hearing was listed for a 1 day final hearing, a notice withdrawing 2 weeks prior would be sufficient time to cancel any instruction to counsel without brief fees having been incurred (as the costs application itself accepts). That limits the costs an opposing party incurs. That the First Respondent did not see that notice is not a consequence to be visited on the Claimant.
52. Third, prior to withdrawing there were case management orders made by the Tribunal in this case and I have found that the Claimant did not comply with those. The First Respondent's application relies on that earlier non-compliance in support of its application that the Claimant (and Second Respondent) have acted unreasonably in the way the proceedings have been conducted (its application is not pursuant ETR 74(3)). Non-compliance with Tribunal orders *can* certainly constitute unreasonable conduct, however, I should consider both the reason for any non-compliance and also consider the nature, gravity and effect of that conduct; **McPherson**.
53. As to the nature, gravity and effect of the failure by the Claimant to provide documentation to the First Respondent relating to her claim, I consider that is of relatively limited effect in this case. The case concerns the liability of a transferor/transferee and the First Respondent had been the Claimant's employer for several years prior to the ostensible transfer. In such circumstances, it would have likely held most if not all of the relevant documentation relating to her 'non-transfer'.
54. As to the absence of a schedule of loss, I observe that the Claimant did include particulars of the loss she was claiming up to the date her claim form was submitted. Again, given the nature of the claim facing the First Respondent, the absence of a schedule of loss in such circumstances had relatively limited prejudicial effect on it. At the final hearing the only 'pleading' as to the Claimant's loss would be that which was contained within the claim form.

55. As to witness statement exchange, I accept that the First Respondent, beyond the date set by the Tribunal for exchange (20 April 2026) and until withdrawal on 1 June 2026 (about 2 weeks prior to the final hearing), had nothing other than the claim form to know what the Claimant's case was as to why she believed it was liable for the end of her employment at the time of the transfer took place. However, I also note that correspondence from the First Respondent seeking exchange of statements did not, on its own case, occur until after the 20 April 2026 order in any event.
56. As to reason for prior non-compliance, I have only the claimant's assertions and account. The Claimant in fact stated she requested more time to obtain witness statements regarding her health, but then immediately made her representations. Whilst it cannot be said the Claimant gives a clear or detailed explanation for non-compliance with case management orders prior to withdrawing her claim, I consider it is sufficiently clear that the Claimant's health has impeded her conduct of the proceedings.
57. Standing back and looking at the whole picture, I do not consider that earlier non-compliance with case management orders and subsequently withdrawing her claim rises to the threshold conduct necessary to provide grounds to make a costs order against the Claimant.

Second Respondent

58. I do not find that the Second Respondent has conducted the proceedings unreasonably.
59. First, the Second Respondent has taken no part in the conduct of the proceedings. Whilst I accept that 'inaction' can constitute conduct (**Kaur**), the inaction in this case was the, principally, the failure to present a response to the claim. From 2 April 2026 it had been told that a judgment may now be issued against it (although it appears that did not actually occur). Having not presented a response – setting out any pleaded case contesting the claim – it should not then be in a position to engage with case management orders relating to document and witness statement exchange to support any case it could present or plead.
60. Second, no reasons are advanced as to why the Second Respondent did not respond. I do not know why it did not respond. I am not able to speculate about the reasons for not presenting a response. That a party chooses not to defend a claim may result in a

judgment being entered against it. That may be to the advantage of the other parties, but I do not consider I can find that not responding to the claim was unreasonable conduct of the proceedings.

61. Third, taking into account the effect of any alleged conduct (including any inaction) I do not consider that the failure by the Second Respondent to defend the claim against it has caused the First Respondent to incur any costs. The application sets out no basis on which it has incurred costs because of the unreasonable conduct or inaction by the Second Respondent to contest the claim.

Employment Judge Price

3 September 2026

Sent to the parties on:

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For the Tribunal Office:

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