



EMPLOYMENT TRIBUNALS

Claimant: Ms Denise Williams

Respondent: DLRC Ltd

Heard at: Cambridge Employment Tribunal (in public; hybrid)

On: 3 September 2026 (hearing date)
21 September 2026 (deliberation date)

Before: Employment Judge Hutchings
Tribunal member C. Grant
Tribunal member J. Vaghela

Appearances:

Claimant: in person (observing only)

Respondent: Ms K. Moss of counsel

COSTS JUDGMENT

1. The complaints of victimization and unlawful deduction from wages are dismissed having been struck out at the hearing in August 2025.
2. The claimant is ordered to pay the respondent's costs in these proceedings assessed at £20,000.

FULL WRITTEN REASONS

Introduction

1. We set out below, in summary, a chronology of these proceedings as a background to the decisions we have made at this hearing.
2. The claimant was employed by the respondent as head of HR and privacy data from 14 November 2022 until her dismissal on 16 November 2023.

Early conciliation started on 20 November 2023 and a certificate was issued on 5 December 2023.

3. By a claim presented to the tribunal on 22 December 2023 the claimant alleges that she was unfairly and wrongfully dismissed and subjected to various acts of discrimination related to her race (she is black African), pregnancy, religion (she is Christian) and that she was subject to victimisation by colleagues. The claimant asserts that the respondent made unlawful deductions from her wages and says the respondent's failure to pay her notice pay was a breach of the terms of her employment contract.
4. At a case management hearing on 28 March 2025 the claimant was ordered by Employment Judge ("EJ") Mitchell to provide factual details about her complaints as her claim form did not include any specific information about the acts she relies on in her complaints of victimisation or discrimination, the dates of her pregnancy, the amount of wages she says she is owed and why.
5. At this case management hearing EJ Mitchell listed a final hearing for 18, 19, 20, 21 and 22 August 2025. At the start of the final hearing we noted that she had only provided limited information. The claimant had only provided details of some factual allegations, and omitted the dates of the pregnancy she relies on in her complaint of pregnancy discrimination and details of the amount of wages she is allegedly owed were outstanding. Mindful the claimant is not represented, but also taking account of the fact she is a senior HR professional and the position from which she was dismissed was head of HR, we spent some time on the first day of the hearing explaining why this information was necessary for the tribunal to properly determine her complaints.
6. Despite our explanation, and our affording the claimant several opportunities during the hearing and subsequently to provide this information, the information we received was limited. As a result, the complaints of victimisation and unlawful deduction from wages were dismissed on the basis the claimant confirmed to us that they were not pursued. Indeed, notwithstanding the claimant's confirmation, this was apparent from the fact the claimant had not provided any information about the protected acts or detriments she relied on in her victimisation complaint nor any information about the amounts she was claiming in wages. As this hearing was unexpectedly adjourned part heard for over a year (the reasons for which are below) a judgment was not issued dismissing these claims. Therefore, we have done so as part of this judgment.
7. At the August 2025 hearing the claimant did not provide any documents from which the tribunal was able to identify the dates of her pregnancy. However, she had provided some other factual information about this complaint and confirmed to us that she intended to pursue this complaint and those of race / religious discrimination, unfair and wrongful dismissal and notice pay.
8. At the start of the August 2025 hearing the claimant also told us that she had not read the respondent's witness statements. We explained to her that it was necessary for her to do so as she would have the opportunity to ask questions about their evidence. We provided the claimant with guidance as to how she should approach this as she is not represented. In so doing we

took account of the fact that, while the claimant may not have been involved in tribunal proceedings in her professional role and, even if she had been, proceedings personal to an individual are invariably more stressful, the claimant is an experienced HR professional. In this regard, we found it curious that the claimant had received the respondent's witness statements in mid July 2025 but had not read them and had no reason to explain this.

9. On day 1 of the August 2025 hearing, we heard some evidence from the claimant, who was cross examined by Miss Moss. However, the claimant did not attend in person after the first day, telling us that she had not arranged childcare for the latter part of the week. We made the observation that it was incumbent on the claimant to arrange childcare and that we considered she had had adequate opportunity to do so, or to inform the tribunal before the start of the hearing that this was proving difficult to do, as the claimant had known about the dates of the final hearing since March 2025 when she attended the case management hearing before EJ Mitchell. Furthermore, a written record of this hearing, including the date for the final hearing was sent to parties on 28 March 2026.
10. While we sought to facilitate the situation with the claimant's childcare by agreeing to a hybrid hearing whereby the claimant could attend by CVP, it quickly became apparent that we could not proceed with the respondent's cross examination of her evidence on this basis as we could hear a child in the background which made it difficult for us to accurately record the claimant's evidence.
11. In any event, the hearing was adjourned part heard on 21 August 2025 as the claimant did not attend. Fifteen minutes before the hearing was due to start the claimant sent an email to the tribunal clerk informing the tribunal that she was in attendance at A&E due to concerns with her current pregnancy. The claimant asked if the hearing could take place as a telephone hearing that day with her attending from hospital. We explained that final hearings cannot take place by telephone and that, in any event, we could not proceed if she was unwell and at A&E. The claimant was unable to say when she would be well enough to attend and give evidence, therefore we adjourned the hearing.
12. Due to the claimant's pregnancy at that time, and the claimant's due date the hearing was listed to be reconvened on 21, 22, 23, 24 and 25 September 2026. This is more than a year on from the start of the original hearing (August 2025) and over 4 years from the events about which the claimant complains. While we sought to list the hearing as a priority, taking account of the fact that the claimant was due to give birth in March 2026 and of the availability of panel members, Ms Moss and the respondent's witnesses, September 2026 was the first available date. As we had made little progress in this hearing window, the reconvened hearing was listed for 5 days. Given the length of time between the hearings, with consent from the respondent's representative, we released the claimant from her oath.
13. As the claimant had not provided evidence supporting the dates of her pregnancy during the hearing, as ordered, in August 2025 we made case management orders for disclosure of documents the respondent had requested prior to the start of the hearing to evidence the dates of the pregnancy. These documents are relevant to the assessment of the

pregnancy discrimination complaint. The claimant was required to comply with the orders by 3 October 2025, with a provision that parties could agree a 14 day extension. On day 1 of the hearing we had already given the claimant explanations as to why these documents were relevant to her complaints. While she was not present when we made these orders, we also provided written guidance in the August 2025 case management order, echoing that verbal guidance.

14. The claimant did not comply with these orders.

15. On 13 October 2025 the respondent made an application to strike out the claims. On receipt of the application, tribunal administration identified a date when all 3 panel members were able to attend the hearing (taking account of other hearings in our and the tribunal diary) and a notice of hearing was sent to parties on 27 November 2025. The hearing was listed for 5 March 2026.

16. At 8.07 on 4 March 2026 the claimant emailed the Employment Tribunal applying to postpone the public preliminary hearing due to take place on 5 March 2026. The application attached a January 2026 medical letter stating that the claimant was in the late stages of a high risk pregnancy and unable to attend the hearing by CVP.

17. In the email the claimant states that:

“I would like to draw the Tribunal’s attention to the fact that the hearing in September [2026 was listed – inserted for clarity and context] for this very reason, namely my pregnancy and associated health considerations”.

18. This is factually incorrect in part. The hearing in August 2025 went part heard due to the non-attendance part way through of the claimant due to the claimant’s attendance at A&E (see above). The date for the reconvened hearing in September 2026 had nothing to do with the claimant’s medical conditions in August 2025 or any subsequent conditions with her pregnancy which have arisen, not least as the tribunal was not aware of these. The matters to which the claimant refers in her March 2026 request for a postponement were not relevant to the date of the September hearing as the tribunal panel when setting this date were aware the claimant’s due date is 13 March 2026. The only factor known to and considered by the tribunal in setting date of September 2026 was to allow the claimant sufficient time after the birth of her baby to be in a position to attend the hearing. While 3 months may have been appropriate, we acted on the side of caution and listed the hearing 6 months after the due date to ensure the claimant has sufficient time to arrange childcare to enable her to attend the hearing and pursue her claim. As the baby would be 6 months old by this time, we decided the baby would be sufficiently old enough to enable the claimant to attend the hearing, notwithstanding the concerns the Tribunal noted at the time as to whether a fair trial for both parties could take place given a gap in proceedings of a year. Indeed, given the length of the adjournment the Tribunal had to take the unusual step of releasing the claimant from her oath as the respondent’s representative had begun cross examination of the claimant’s evidence.

19. In identifying a date when all three panel members could sit and sending the notice of hearing in November 2025 tribunal administration were not aware that the claimant was pregnant (the complaint of pregnancy discrimination does not relate to the claimant's current pregnancy), did not make enquiries of the tribunal panel and, accordingly, were not aware that her due was 13 March 2026. Of course, had they been so, the hearing would not have been listed 7 days before the claimant's due date. The date of this hearing is unfortunate; however, it was by coincidence not design. Furthermore, on receipt of the notice (which was sent to parties on 27 November 2025, some three months before the hearing and before the claimant was due to give birth) the claimant did not inform the Tribunal that this date was an issue. The first communication from the claimant about this was 4 March 2026.
20. The claimant's application to postpone the 6 March 2026 hearing was refused by the tribunal panel. The reasons for this refusal and for the tribunal's decision to strike out the complaints of pregnancy discrimination, automatic unfair dismissal and wrongful dismissal are set out in the Judgment dated 6 March 2026 and sent to parties on 29 April 2026 (the "Judgment"). We also noted our preliminary view that the complaints of religious discrimination and race discrimination have little reasonable prospect of success but did not issue a deposit order at this time as the claimant had not had a right of reply nor did we have any information about her financial circumstances (see below).
21. The tribunal did not strike out the complaints of race and religious discrimination. As paragraph 2 of the CMO records, the respondent's application for a deposit order in respect of these complaints could not be considered at the 6 March 2026 hearing as the tribunal was not satisfied it could comply with rule 40 of the Employment Tribunal Procedure Rules 2024 (the "Rules"), in particular it did not have any information about the claimant's financial circumstances and, as the claimant did not attend the hearing, the tribunal could not make enquiries of the same.
22. Therefore, we made the following case management orders to assist our determination of the respondent's application for a deposit order, and ensure the claimant had every opportunity to respond to the application and provide any evidence if she wanted to defend the applications: the orders also give the claimant an option of an oral hearing, as follows [sic]:
- "Should the claimant require an oral hearing to determine this application she must send a written request to the Tribunal copied to the respondent by no later than 30 April 2026. A 3 hour hearing will be listed in June 2026 to avoid further delay in these proceedings. At the time of writing no such request has been received from the claimant.
- By 5 June 2026* the claimant must send to the respondent and the Tribunal the following information about her financial circumstances:

monthly income and outgoings; and

savings.

By 5 June 2026* claimant must send to the respondent and the Tribunal a statement setting out why she considers the treatment about which she complains is because of her race and / or religion. In light of the witness statements of the respondent's witnesses (copies of which she received for the August 2025 final hearing) she considers these complaints are likely to succeed.

*This date is 12 weeks from the claimant's due date. Therefore we consider it just and fair to order her to respond by this date, given the respondent's application is dated 13 October 2025 and, mindful of Rule 3(2)(d) we must avoid delay, so far as compatible with proper consideration of the issues."

23. In making these orders in March 2026 we were mindful of the claimant's pregnancy at that time, hence allowing several weeks after what we understand from her correspondence to be her due date for the claimant to comply. We considered the date fair to both parties, as we explained in the case management order.

24. The claimant did not comply with these orders.

25. The tribunal panel reconvened to consider the application on the papers; the reasons for so doing having been previously notified to parties in writing (with the claimant been invited to request an oral hearing), and orders made for the claimant to provide all relevant documentation. There had been no correspondence from the claimant; again she has not complied with tribunal orders to provide documents relevant to further her case in these proceedings.

26. Despite the fact the claimant has consistently failed to engage with the tribunal in providing the information ordered, we were mindful that at the time of the last hearing she told us she was heavily pregnant. Therefore, we decided not to strike out the remaining claims for failure to comply with tribunal orders. However, unanimously, we noted in the reasons for making the deposit order that "if the claimant fails to comply with any more orders of this tribunal we will conclude that she has decided not to actively pursue her claim. In these circumstances, any further non-compliance by the claimant is likely to result in the tribunal striking out the remaining claims."

27. Unanimously, we agreed, and noted in the reasons for the deposit order that the "claimant has not responded to the orders made by the tribunal, to assist her as a non represented party, in responding to the application for a deposit order". She did not request an oral hearing, despite being given this option. Therefore, mindful of Rule 3, we considered it fair to both parties and proportionate to proceed with consideration of the deposit order application, as we indicated in the March 2026 case management order.

28. Having considered the information before us, we unanimously agreed that the complaints of race and religious discrimination have little reasonable prospect of success. The claimant was ordered to pay a deposit of £1,000 for each of the race and religious discrimination complaints by no later than 28 days after the date the order was sent to parties. The deposit order was sent to parties on 18 June 2026.

29. On 27 May 2026 the respondent made an application for costs. This application was sent to the claimant. In summary grounds for the application are:

29.1 the claimant has brought multiple claims with no and/or little reasonable prospects of success against the respondent; and

29.2 the Claimant's conduct in the proceedings has been unduly unreasonable.

30. On 18 June letter tribunal administration sent a letter by email to both parties asking them to notify the tribunal of any dates they could not attend a costs hearing in September 2026.

31. The claimant did not respond to this email.

32. Therefore, it was reasonable for tribunal administration to conclude that there were no dates to avoid in setting a date for the costs hearing.

33. On 14 July 2026 tribunal administration sent a notice of hearing to parties informing them that there would be a hearing to determine the costs application on 3 September 2026. That order contained the following information and orders:

"The respondent's application for costs was referred to Employment Judge Hutchings on 13 July 2026. 3 September is the earliest date the tribunal panel can reconvene.

By 28 July 2026, the claimant must send to the respondent and the tribunal a written response to the respondent's cost application dated 27 May 2026.

By no later than 27 August 2026 the respondent must send to the tribunal and the claimant an electronic hearing file of relevant documents."

34. The claimant did not comply with this order.

35. We note that all correspondence has been sent by the tribunal to the claimant using the email address stated on her ET1 which she confirmed to the tribunal is her preferred method of communication.

36. On 10 August 2026 the tribunal's finance department notified tribunal administration that no deposit had been paid. Tribunal administration sent this notification to the tribunal panel on 3 September 2026.

37. At 23.27 on 1 September 2026 the claimant sent an email with attachments to the tribunal and respondent. This email was referred to EJ Hutchings on 2 September 2026, who was able to consider it after her hearings had concluded that day, and consider it with the tribunal panel prior to the start of the hearing on 3 September 2026.

38. In the email the claimant says that she only became aware of the 3 September 2026 hearing on 1 September 2026 when [she] logged into [her] email to contact the Tribunal about [her] current circumstances.

39. We consider the contents of her 1 September 2026 email contradictory to the attachments. There is a translation of a Swiss medical letter dated 1 September 2026 which states:

“The patient is suffering from post-natal Depression. She is unable to participate in Person or by Video in the outcoming [sic] Court case.”

40. However, her email sets out a “[s]ummary of what I am asking the Tribunal to do”, which states:

“Permit me to attend Thursday's hearing remotely by CVP; or, alternatively, adjourn the hearing to allow a reasonable opportunity for me to participate;

Take into account the enclosed medical evidence of my current postnatal depression;”

41. In this regard we recount the approach taken by the claimant on 21 August 2025; she asked the tribunal if she could attend the hearing by telephone notwithstanding that she had been admitted to A&E.

42. Evidently, given the doctor's letter, the claimant was not well enough to participate in the hearing. We noted that this relates to the September 2026 hearing and refers to “current” post natal Depression. The claimant has not provided any medical evidence as to the duration of her post natal Depression condition and the extent to which it prevented her from checking her emails prior to this hearing, and from when.

43. However, given the conflict in her own email, and the express request for a hearing link, at 17.18 on 2 September 2026 EJ Hutchings (the first opportunity EJ Hutchings had to deal with this) instructed tribunal administration to send a CVP hearing link to the claimant, requesting that she log on at 9.30am to complete remote hearing checks. In so doing, Employment Judge Hutchings was mindful that the claimant currently resides in Switzerland so would not be able to give evidence in any event as it is unlikely (given she says she only became aware of the hearing on 3 September 2026) that she will have obtained the requisite authority from Swiss authorities to give evidence from abroad over video link. In any event, on 3 September 2026 tribunal administration confirmed that a hearing link was sent to the claimant on the afternoon of 2 September, prior to this direction, as the hearing was marked as hybrid on the administrations system.

44. The claimant did attend the hearing. At the start of the hearing we explained to the claimant that, given the 1 September letter from her doctor, we could not allow her to participate in the hearing. We explained that we would consider her postponement application at the start of the hearing and she could observe if she felt well enough to do so. The claimant attended the hearing intermittently.

45. We turn now to the claimant's application dated 1 September 2026 to postpone this costs hearing.

Claimant's application to postpone the costs hearing

46. At the start of the hearing we referred to the claimant's 1 September email. Ms Moss told us that neither she, the solicitors instructing her or the respondent had received a copy of this letter and the attachments. We took a break to allow Ms Moss to take instructions as the copy before the tribunal was copied to the firm of solicitors instructed by the respondent.
47. After the break Ms Moss explained that the email was sent to a fee earner who had not been involved for some time and that the claimant would have received an automated response with contact details for the fee earner who had taken over the matter. Ms Moss told me that no further emails had been received by the solicitors. Ms Moss confirmed that she had had sufficient time to consider the email and the postponement application and take instructions.
48. Therefore we proceeded to consider the application. As the claimant was unable to participate in the hearing on the advice of her doctor, we summarise below the claimant's application.
49. In the claimant's email dated 1 September 2026 the claimant makes an application to postpone this costs hearing to "allow [her] a reasonable opportunity to respond fully to the Respondent's costs application, given that [she] did not receive the Tribunal's order requiring a response and only learned of the hearing today".
50. In support of her application she asks us to take into account the enclosed medical evidence of her son's hospital admission and ongoing recovery. The claimant does not include any medical evidence about this with her email. The medical evidence attached is the letter about her depression and a letter dated 14 January 2026 setting out why she was unfit to attend any court proceedings in January 2026. She also attaches a medical letter in German for which she does not provide a translation. Using online translation services we were able to identify the letter as stating that the child requires the presence of parents. There is no reference to the child having a medical condition. There is no reference in this letter to a seizure. There is no evidence pertaining to her son's admission to hospital in June 2026.
51. The claimant states that her lack of knowledge about this hearing is not deliberate. She says she accessed her email on 1 September 2026 "to contact the Tribunal about my medical and family circumstances" and it was then that she became aware of the hearing.
52. In addition to the documents to which we refer above, the claimant attaches the following to the email:
- 52.1 "a fuller written response addressing the substance of the Respondent's costs application;
- 52.2 An application to reconsider the deposit order. and the two deposit orders accompanies this application separately.
53. In reply, in summary, Ms Moss told us that the respondent resists the postponement application. First, we addressed the level of costs sought by the respondent as the cost schedules received by the tribunal identified two

figures: £55,290 (costs incurred by the respondent in defending the proceedings from the outset) and costs incurred from the date of the first cost warning letter in July 2025 (£41,969). We explained that, pursuant to Rule 32 of the Employment Tribunal Procedure Rules 2024, this tribunal can only assess costs up to a maximum of £20,000. Should the respondent be seeking an amount in excess of this, the application would require a detailed assessment by a specialist judge. Therefore, it would be necessary to postpone this hearing in any event.

54. We took a break to allow Ms Moss to take instructions.

55. Ms Moss told us that the respondent was seeking to recover all costs on the basis of the claimant's conduct in these proceedings but did not want any further delay in these proceedings. For that reason, if the hearing did proceed, the respondent would limit its application to £20,000. However, if this hearing was postponed the respondent would reserve its position to claim the full amount of costs incurred in these proceedings, including any amount incurred as a result of a reconvened costs hearing.

56. In summary, Ms Moss made the following submissions opposing the postponement application.

57. The claimant's request to postpone is last minute and repeated behaviour. She has not provided an adequate explanation: her email does not explain how long the claimant has not been checking her emails and there is no evidence before the tribunal to her having a long period of incapacity which means she was not able to check her emails from May 2026 (when the costs application was sent to her) until two days before the hearing. There is no evidence, for example a screenshot showing unread emails, that 1 September was the first time she logged in to check her personal email account. Ms Moss told us that even for a litigant in person this suggestion was quite extraordinary, particularly as this was at a time when she had relocated overseas. Ms Moss told us that the respondent does not accept that the claimant was not aware of the 27 May 2026 cost application; it had already sent the claimant cost warning letters on 16 July and on 13 October 2025. The respondent says the claimant has not participated in these proceedings since August 2025; she did not reply to the tribunal's letter dated 18 June 2026 or order dated 2 July 2026.

Decision: postponement application.

58. Any decision to postpone a hearing must be taken applying Rule 32, copied below.

Relevant law

Postponements

32.—(1) *An application by a party for a postponement must be received by the Tribunal as soon as possible after the need for a postponement becomes known.*

(2) *In the circumstances listed in paragraph (3) the Tribunal may only order a postponement where—*

(a) all other parties consent, and—

(i) it is practicable and appropriate for the purposes of giving the parties the opportunity to resolve their disputes by agreement, or

(ii) it is otherwise in accordance with the overriding objective,

(b) the application was necessitated by an act or omission of another party or the Tribunal, or

(c) there are exceptional circumstances.

(3) The circumstances are—

(a) a party makes an application for a postponement less than 7 days before the date on which the hearing begins, or

(b) the Tribunal has ordered two or more postponements in the same proceedings on the application of the same party and that party makes an application for a further postponement.

(4) In this rule—

(a) “postponement” means a postponement of a hearing including any adjournment which causes the hearing to be held or continued at a later date;

(b) “exceptional circumstances” may include ill health relating to an existing long term health condition or disability.

59. Rule 32(3) applies as this application was made postponement less than 7 days before the date on which the hearing begins. Therefore, we can only postpone this hearing if there are “exceptional circumstances” which “may include ill health relating to an existing long term health condition or disability.”

Findings of fact

60. The cost application was sent to the claimant on 27 May 2026. At this time she was already aware that the respondent intended to make a cost application, having been in receipt of cost warning letters dated 16 July 2025 and 13 October 2025.

61. On 18 June 2026 the tribunal sent the claimant an email (her stated method of communication in these proceedings) asking her to confirm her availability for a costs hearing. She did not respond to this email. On the 14 July 2026 the tribunal sent her a notice of hearing for today. She was ordered to respond in writing to the costs application by 28 July. She did not comply with this order nor at any time until 1 September 2026 contact the tribunal to say that she was not able to attend this hearing.

62. The claimant says that she only became aware of this hearing on 1 September 2026 when she checked her emails to inform the tribunal about her current circumstances. There is no evidence before the tribunal that she had not accessed her email between 27 May and 1 September 2026 nor any evidence that a reason existed which prevented her from doing so.

63. We find it is simply not credible that the claimant had not accessed her email during this time. It is apparent from documents in the hearing files for this and the final hearing that she uses this email address for personal correspondence beyond interactions with the tribunal. She had recently relocated and has two properties remaining in the UK, one of which was advertised for tenancy. On balance, we find that she used this email to manage her personal affairs and would have done so during this time due to her relocation.

64. The doctor's letter of 1 September 2026 restricts the claimant's participation in today's hearing. There is no evidence before us of any diagnosis for May

2026 or earlier that would have prevented the claimant from checking her personal email account.

65. The claimant's contact with the tribunal on 1 September 2026 echoes the approach she took in March 2026. Having received the notice for that hearing in November 2025 and in January 2026 a medical document setting out conditions related to her pregnancy she did not contact the tribunal until 4 March 2026, two days before the hearing on 6 March 2026 hearing, when she made an application to postpone that hearing.
66. The tribunal has limited resource. We consider a disproportionate amount of time has been allocated to these proceedings when the claimant has repeatedly failed to comply with orders (as set out in the above chronology), including at the final hearing last August. The claimant has had the opportunity to respond to the application in writing and to provide financial information, both at the tribunal's request, and has been supported by the tribunal with explanations in orders as to why it is necessary for her to do so to advance her claim, mindful she is not represented. This is her claim; it is incumbent on her to check her emails. That she did not do so, without good reason, is a matter for her.
67. In any event, for the reasons stated we do not accept she did not check her emails during this time. It is simply not plausible that she only saw the correspondence from the tribunal about today's hearing on 1 September 2026.

Conclusion

68. In the circumstances as we have found them we consider there is significant prejudice to the respondent of postponing.
69. In reaching this conclusion we have also taken account of Rule 32, specifically that we may postpone where an application is made less than 7 days before the hearing if there are exceptional circumstances.
70. We have found the doctor's note limits the claimant's participation today. This does not satisfy the test for exceptional circumstances. There is not evidence that the claimant had or has a long term or existing condition that prevented her from checking her emails. Indeed, we have found that it is not plausible that she did not check them.
71. Therefore, we conclude there are no exceptional circumstances warranting a postponement and the claimant's explanation for her delay in seeking the postponement simply not credible.
72. We have also taken account of the overriding objective of the Employment Tribunal (Rule 3):

Overriding objective

- 3.—**(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
- (2) Dealing with a case fairly and justly includes, so far as practicable—
- (a) ensuring that the parties are on an equal footing,
- (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues,

(c)avoiding unnecessary formality and seeking flexibility in the proceedings,
(d)avoiding delay, so far as compatible with proper consideration of the issues, and

(e)saving expense.

(3) The Tribunal must seek to give effect to the overriding objective when it—

(a)exercises any power under these Rules, or

(b)interprets any rule or practice direction.

(4) The parties and their representatives must—

(a)assist the Tribunal to further the overriding objective, and

(b)co-operate generally with each other and with the Tribunal.

73. The approach the claimant has taken to these proceedings has not assisted the tribunal, despite our many attempts to assist her with guidance (oral and written) on processes and ordering her to provide information to enable the proceedings to advance. Her conduct in requesting postponements at short notice, without good reason, based on our findings, has resulted in delay, increased expense to the respondent and a disproportionate amount of limited tribunal resources being allocated to these proceedings. It is neither fair nor proportionate to postpone these proceedings, resulting in months of further delay, given the claimant's conduct.

74. For these reasons, unanimously, the application to postpone this hearing is refused.

75. Therefore this hearing proceeds to consider the following matters:

75.1 The claimant's application to reconsider the deposit orders;

75.2 The status of the September 2026 reconvened final hearing; and

75.3 The respondent's costs application.

Application to reconsider the deposit orders

76. Having considered that part of the 1 September 2026 email seeking a reconsideration of the deposit orders made on 9 June 2026 in respect of the race and religious discrimination complaints and having heard oral submissions from Ms Moss in response, we made the unanimous decision to refuse the claimant's application to reconsider the deposit orders. Our reasons follow.

Relevant law

77. In considering an application for reconsideration we must take account of Rule 69:

69. *Except where it is made in the course of a hearing, an application for reconsideration must be made in writing setting out why reconsideration is necessary and must be sent to the Tribunal 14 days of the later of—*

(a)the date on which the written .. judgment sought to be reconsidered was sent to the parties, ...

(b)the date that any written summary reasons were sent, if these were sent separately from the judgment, or

(c) the date that any written full reasons were sent, if these were sent separately from the judgment.

78. The claimant's application to reconsider the deposit orders made on 9 June 2026 and sent to parties on 18 June 2026 in respect of the race and religious discrimination complaints is refused as the application is made more than 14 days after the decision was sent to the parties.
79. While in the application the claimant says the delay is due to her son being unwell and her not accessing her emails until 1 September, the only medical documents attached are a document relating to the claimant's depression (reference above) and a document in German for which the tribunal has not been provided with a translation (and from our own translation does not accord with the contents of the claimant's email). There is a reference in this to 21 June 2026. The claimant does not provide any medical evidence to support her son's condition or admission to hospital at that time or at all.
80. Furthermore, in considering the postponement application we have found that it is simply not credible that the claimant did not access her emails from May to 1 September 2026. She was aware the tribunal was considering a deposit order, not least from her request to postpone the March 2026 hearing. In any event, the claimant was aware these proceedings were ongoing; it is incumbent of her to check her emails.
81. Furthermore, had the request for reconsideration been in time we do not consider that it is in the interests of justice for the tribunal to reconsider the deposit order for the reasons below.
82. At no time in these proceedings has the claimant explained why the alleged rolling of eyes by a then colleague in a conversation discussing a candidate for a retracted job offer was because of or related to her religion. Nor has she explained why comments she alleges were made about her presentation skills, late submission of materials or information she provided about parental policy were related to or because of her race. This is despite the fact the tribunal has made repeated requests for this information since March 2025.
83. Furthermore, the tribunal delayed considering the application for a deposit order at the March hearing to allow the claimant another opportunity to provide this information. She did not do so. Indeed, she provides no explanation in her request for reconsideration of the deposit orders despite the fact that the reasons set out our conclusion that these complaints have little reasonable prospects of success. Therefore, we still do not understand why the claimant connects the alleged behaviour to her race and religion.
84. Given the claimant's conduct in not complying with any of our orders to date, we are not persuaded by the contents of her application that she would finally do so if she were given a further opportunity.
85. Mindful of Rule 3 we must consider both parties positions. The respondent has been patient while this tribunal has given the claimant repeated opportunities to explain to us the basis of her race and religious discrimination complaints. She has not done so. Ms Moss submits that the

claimant is treating the tribunal with contempt. Given the number of times she has simply not complied in any way with our orders, we are minded to agree.

86. For these reasons we agree unanimously that, had the application been submitted in time, it is not in the interests of justice to further delay these proceedings by reconsidering the deposit orders as there is no evidence before us that our conclusion would change.

87. For these reasons, the application to reconsider the deposit orders dated 9 June 2026 and sent to parties on 18 June 2026 is dismissed.

88. As the deposits have not been paid by the deadline set by the tribunal, the complaints of race and religious discrimination are dismissed.

89. A separate dismissal judgment dated 3 September 2026 has been sent to parties.

September 2026 reconvened hearing

90. As there remain no continuing complaints in these proceedings, the tribunal has vacated the final hearing which was reconvened for 21, 22, 23, 24 and 25 September 2026. Parties do not need to attend. These proceedings have concluded.

Costs application

91. By letter dated 27 May 2026 the respondent made the following application pursuant to Rule 74(2)(a): that the claimant should pay a proportionate sum of the respondent's costs in these proceedings to date for the following reasons:

91.1 The claimant has brought multiple claims with no and/or little reasonable prospects of success against the respondent, which have been dismissed or struck out by the tribunal and which the claimant has not actively pursued; and

91.2 the Claimant's conduct in the proceedings has been unduly unreasonable.

92. In considering the costs application we have taken account of the respondent's written cost application dated 27 May 2026, the claimant's written response dated 1 September and the pages to which Ms Moss referred us in her oral submissions in the 169 electronic costs hearing file and 760 page hard copy hearing files from the August 2025 final hearing.

Findings of fact

93. First, we consider the claimant's conduct in these proceedings. We repeat the chronology set out above, which details the history of the claimant's responses (or lack thereof) to directions of the tribunal. We also repeat our findings of fact made above in respect of the postponement and reconsideration applications.

94. The claimant has repeatedly failed to comply with orders of the tribunal (as set out in the chronology and findings of fact above) despite the tribunal, mindful of Rule 3(2)(a) to ensure parties are on an equal footing as the claimant is not represented, repeatedly providing the claimant with clear oral and written explanations and orders as to why the documents were necessary to assist the claimant in presenting her claim to the tribunal / defending the applications made by the respondent.
95. As to the final hearing which started in August 2025, the claimant did not arrange childcare, despite having several months notice of this. She attended on day one (18 August) and gave limited oral evidence, but did not attend the following day (19 August), emailing the tribunal about a medical emergency. At the tribunal's request she subsequently provided a medical note. She did not attend on day 3 (20 August) due to sickness. She did not attend on day 4 (21 August). When the tribunal clerk contacted her to find out the reason why, she told the clerk that the tribunal had told her not to attend until 22 August. This is factually incorrect. No such direction had been given to the claimant orally or in writing. The tribunal's email to parties expressly states that the hearing will continue on 21 August and includes a CVP link for that reason. On 21 August, given the claimant's non attendance we adjourned the hearing and made case management orders for disclosure of relevant documents and the date of the reconvened hearing, the details of and date for which are explained above.
96. Furthermore, at the start of that hearing the claimant told us she had not read the respondents witness statements, which she had had for several weeks. It was our finding at the time, and it remains so today, that the claimant did not prepare in any way for the final hearing. She did not provide all the information about her claim ordered by EJ Mitchell in March 2025. She did not provide documents requested by the respondent and subsequently ordered by the tribunal to support the dates of her pregnancy either before, during (when we explained to the claimant the significance of these documents in advancing her complaint of pregnancy discrimination) or after the hearing. Mindful the claimant is a litigant in person we have given her multiple opportunities to advance her case in this regard. Furthermore, we consider that as a senior HR professional she would have some understanding herself as to why these documents are key. Yet, still she has not provided documents identifying the dates of her pregnancy; the documents she has provided are peripheral to this point at best and have the dates related to the pregnancy redacted, which is curious in itself.
97. While, regrettably, the claimant has faced some health issues during the course of these proceedings, the tribunal has accommodated these and taken account of the fact she had a baby in March 2026 in the timetabling of the reconvened final hearing and in not making some decisions at the hearing in March 2026 to give the claimant the opportunity to provide documents / a response to the respondent's applications. She has not done so. Furthermore, the claimant has not provided an adequate reason for not complying with the orders. Her explanation is that she has not checked her personal email account (her preferred method of contact from the tribunal in these proceedings) for months on end due to her and her son's health issues. Yet, there is no medical evidence before the tribunal that either she or her son had on-going health concerns during the months

she says she was unable to check her emails. Indeed, the claimant has not provided any evidence to the tribunal that her email account remained unread during her period of non-engagement with these proceedings. That is from August 2025 to September 2026 when the contact from the claimant to the tribunal has been two requests for postponements of hearings with limited evidence to support the requests, both made two days before the hearing. As Ms Moss submitted, if this really was the case, why has she not evidenced it with dated screenshots of her email account showing the emails were unread.

98. We have found that is because she did access her email account during the time she says she did not. The account address is included in property information and other personal documents we have seen in the final hearing file and costs hearing file, relating to medical information and two properties owned by the claimant and her husband. During this period the claimant relocated from England to Switzerland. We have seen documents evidencing that one of those properties was advertised for rent. In these circumstances it is simply not credible that she did not access her email account. Indeed, it is curious and convenient that that the dates on which she did access it happened to be just two days before (on both occasions) the date of a tribunal hearing.
99. Taking account of all these circumstances we find, on balance, that the claimant was accessing her email account during this time, not least to manage her personal life. Whether she read the tribunal's emails when accessing the account, she would have been aware from the email headers in her inbox that the tribunal was corresponding with her in her on-going claim. For reasons known only to the claimant we find that, on balance, she chose not to read this correspondence or, more likely, read it and ignored it. It is telling that both requests to adjourn are made two days before the hearing; it is unlikely this a coincidence. It is more probable that she read the email and then decided to request a late postponement to put the respondent and tribunal in a difficult situation. Indeed, she did not even ensure that the 1 September email reached the respondent's solicitor. She received an out of office notification, which she ignored, such that the respondent, its solicitor and barrister were not aware of the postponement request at the start of this hearing.
100. Next, we consider whether the claimant has misled us about her pregnancy. The respondent submits she has, telling us that from the outset of these proceedings the respondent has maintained that it did not know about the claimant's pregnancy when she was dismissed, was not told about it until the period of ACAS conciliation (20 November to 5 December 2023) and has come to the conclusion that she was in fact not pregnant when she was dismissed. The respondent's case is that the claimant subsequently became pregnant, decided to rely on this retrospectively as the reason for her dismissal in order to bring a complaint of pregnancy discrimination and has concealed the dates of this pregnancy from the respondent and tribunal as they do not align with her case that she was pregnant and told the respondent she was pregnant before her dismissal.
101. Certainly the claimant has still (at the date of this hearing) not provided dates of this pregnancy. As Ms Moss pointed out in her opening

note for the final hearing, sometimes this is not necessary, for example when a claimant is evidently pregnant. This was not the case here. The claimant says she found out she was pregnant in September 2023 and told the respondent on 26 October 2026. Pregnancy based on these dates would not be visibly evident. Therefore, the burden is on the claimant to prove the dates of her pregnancy so that the tribunal can determine the protected period for the complaint of pregnancy discrimination.

102. Any information she has provided about her pregnancy (which is limited) has the dates redacted. Despite requests by the tribunal at the August hearing, the claimant has not explained why these documents are heavily redacted, or provided the tribunal with unredacted copies in response to our requests. We find the reason she cannot produce a document which dates her pregnancy to September/October 2023 is that she was not pregnant at this time or at the time. We find that the documents before us (which have all dates redacted) relate to a pregnancy starting at a later date for the following reasons.
103. The claimant's fit note dated 11 October 2023 (the time at which she says she was pregnant) does not mention pregnancy as the reason for her sickness absence; it states: "Stress at work. Recent bereavement". Of course, the fact it does not is not conclusive. An employee may not wish to disclose pregnancy to their employer at an early stage. However, the claimant says she did tell the respondent in October 2023, a fact relevant to the success of her complaint, so it is curious this is not included as a reason for her sickness absence.
104. The GP notes she has provided date to 2 July 2024 and are also heavily redacted: there are no dates from which we can identify her pregnancy. Again, we have to ask ourselves why. What is the claimant hiding? We find by concealing the dates she was hiding the actual dates of her pregnancy as they do not support her complaint of pregnancy discrimination.
105. By email dated 22 July 2024 the claimant informed the tribunal that she had her baby on 9 July 2024. A heavily redacted document provided by the claimant to the tribunal dated 2 July 2024 records that the claimant has high blood pressure and there is a risk of pre-eclampsia. The claimant has redacted full and partial sentences from this record relating to her pregnancy, including dates. Why? We find, on balance, the only explanation (as she could not provide one despite our requests at the August hearing, and also our request for an unredacted copy) is that she is concealing some information which would have assisted us in identifying the actual dates of her pregnancy. The respondent referred us to NHS advice on pre-eclampsia. This explains that when pre-eclampsia is diagnosed, pregnancies are not allowed to go over full term.
106. If the claimant found out she was pregnant in September 2023, as she alleges, and gave birth on 9 July 2024 (as she told the tribunal), on our calculation she had a pregnancy of over 10 months and the pregnancy continued with a condition of high blood pressure and pre-eclampsia several weeks beyond full term. That is simply not plausible. The reason we say that it is not plausible is it is unlikely the claimant would have been allowed to give birth beyond full term due to her pre-eclampsia. Therefore, we conclude not pregnant in September/October 2023.

107. This finding is supported by the document the claimant provided about her scan. NHS information identifies the first scan at 12 weeks. There is no evidence of any requirement for an earlier scan. The claimant has disclosed a text referring to a scan. The date is 31 January 2024. Counting back from this date would mean pregnancy began on 8 November 2023.
108. For these reasons, we find that the claimant only became pregnant after employment ended, the respondent only found out about that pregnancy in ACAS period and the claimant has constructed a pregnancy discrimination case knowing she was not pregnant on the date of her dismissal. When she became pregnant we find that she retrospectively constructed a pregnancy discrimination complaint. When she told the respondent during ACAS conciliation she was pregnant, this was accurate. However, it was not accurate that she was pregnant at the time of her dismissal.
109. We find this is why she has been unable to assist the tribunal with identifying the protective period for this pregnancy; she has no documents to disclose dating her pregnancy to September / October 2023 because she was not pregnant at that time. We find that the claimant has misled the respondent and the tribunal about the dates of her pregnancy. In this regard, the claimant has treated this tribunal with contempt.
110. In this context on 16 July 2025 the respondent sent the claimant a cost warning letter, telling the claimant that it had already incurred more than £20,000 in costs. The respondent points out all claims were misconceived and sets out the ways in which said claims are weak. The automatic unfair dismissal and pregnancy discrimination complaints fall away as the claimant was not pregnant at the time of her dismissal. There are no details of the protected acts or detriments for the victimisation complaint, despite orders from the tribunal to provide this information. The claimant has not explained the basis on which the factual allegations in her race and religious discrimination complaints (which relate to feedback about her presentation skills and withdrawal of a job offer to a third party) are either because of or relate to her race. The respondent states that it is willing to forego any future costs application if she claimant withdraws the claims. That letter was ignored.
111. She was afforded further opportunities by the tribunal to provide this information during the August 2025 hearing and subsequently as recorded above, despite our repeated explanations as to why this information may assist the claimant to advance her case and that failure to provide it might result in some or all of her complaints being struck out.
112. On 13 October 2025 the respondent also sent a second costs warning letter to the claimant setting out why the respondent says the complaints of pregnancy discrimination, direct race discrimination, harassment related to race, direct religious belief discrimination, harassment related to religious belief, and wrongful dismissal had no reasonable prospect of success, notifying the claimant that if the respondent is successful it will pursue its costs to date which were (at that time) in excess of £35,000. The respondent gives the claimant the option,

within 7 days, to withdraw the claims without any risk of a costs application. The claimant did not reply to this letter.

113. The respondent's 13 October 2025 application to strike out the claims was considered at the hearing on 6 March 2026. We dismissed some of the complaints as follows:

113.1 The complaint of pregnancy discrimination is struck out for failure to comply with Tribunal orders and for having no reasonable prospects of success.

113.2 The complaint of automatic unfair dismissal is struck out for failure to comply with Tribunal orders and for having no reasonable prospects of success.

113.3 The complaint of wrongful dismissal is struck out for having no reasonable prospects of success.

114. We also made case management orders to assist the claimant in responding to the respondent's deposit order application and gave her the option of an oral hearing to determine these. The claimant did not reply to these orders. We also noted that should the claimant fail to comply with orders yet again, without good reason, it may result in her complaints being struck out.

115. The timeline of the claimant's failure to comply with these orders or to respond to the tribunal's invitation to request an oral hearing for the deposit order application is set out in the chronology and findings above.

116. Taking account of this timeline we find that the claimant has repeatedly ignored correspondence from the tribunal and the respondent without providing a good reason for so doing. She has had guidance from the tribunal as required by Rule 3 and multiple opportunities before 1 September 2026 to set out the evidence ordered by the tribunal to support her complaints and information ordered about her financial circumstances. We also repeatedly warned the claimant of the consequences of not providing this information. We are satisfied we could do no more.

117. This respondent has been patient, fair and proportionate in its approach to defending these proceedings. Yet, still it has incurred more than £50,000 in costs.

118. We have analysed the two costs schedules, which are detailed as to the work carried out. We are satisfied that the respondent has incurred costs of at least £20,000 (the sum sought), indeed significant more, as a direct result of the claimant conduct detailed above and her failure to comply with reasonable requests from the respondent and, more specifically, tribunal orders.

119. The claimant has not provided any evidence of her means, despite orders to do so in March 2026, and a warning from the tribunal as to the consequences of not so doing. In her 1 September 2026 email she says that she cannot afford a costs order, now resides in Switzerland and not been employed since her employment with the respondent was terminated. The claimant does not provide any evidence that she is

impecunious. We have no evidence of bank statements or savings, income or expenditure notwithstanding the tribunal's March order that she provide details of her monthly income and outgoings and savings by 5 June 2026.

120. The evidence before us about the claimant's means has been adduced by the respondent. The claimant and her husband own two properties in England with historic values of £485,000 (2023) and £190,000 (2019); the evidence before us is that they are rented out.

Relevant law

121. 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.

122. 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.

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

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

123.2 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.

124. 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; taking account of a subjective assessment of the claimant's knowledge of the merits of their claim. 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)).

125. 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).

126. 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."

127. 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."

128. 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.

129. 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).*

130. 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.....*

131. Ability to pay is a relevant factor for the Tribunal to consider. Rule 82 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.*

132. 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).

133. 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]).
134. 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.
135. 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.
136. 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. 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.”
137. 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.

138. In the case of *Keskar* 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.

139. 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.

140. 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.

141. 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.

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

143. At the hearing Ms Moss referred us to the decision of the Court of Appeal in Arrowsmith v Nottingham Trent University [2011] EWCA Civ 797 which related to a complaint regarding pregnancy; the claimant alleged that she had been refused a permanent post because she had told the respondent she was pregnant. In the Arrowsmith case the employment tribunal preferred the evidence of the respondent's witnesses that she had not told the respondent she was pregnant and that her evidence she had was a lie. Dismissing the claimant's appeal against the costs order made by the Employment Tribunal, the Court of Appeal said that in determining whether to make a costs order for unreasonable behaviour was a fact sensitive consideration and "a lie on its own would not necessarily be sufficient to found an award of costs, it was for the tribunal to examine the context and the nature, gravity and effect of the lie in determining the unreasonableness of the alleged conduct. In that case the Employment Tribunal had assessed the claimant's conduct to be unreasonable based on its finding that she had made a case that was materially dependent on advancing assertions that were untrue; and that it had been entitled to conclude that it ought to make an order for costs against her.

Conclusion

144. 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".

145. The application was made on 27 May 2026. It is in time.

146. First, we are 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. We direct ourselves 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. we 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.

147. That said, this starting point for our assessment must be balanced with the fact that the claimant was a highly paid, senior HR professional and would, as a result of her profession and seniority, have some understanding of employment situations, rules and appropriate conduct and also of the guidance this tribunal has provided to the claimant, orally and in writing, to assist her pursuant to rule 3(2)(a) to fully participate in these proceedings and present her best evidence, most specifically documents to support the dates of her pregnancy and particulars of her other complaint.

148. Next, we remind ourselves that, in the Employment Tribunal, the decision to make a costs order is the exception rather than the rule.

149. The test for imposition of a costs order under is a three-stage test:

149.1 First, a Tribunal must ask itself whether a party's there are grounds to make a costs order and

149.2 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

149.3 Third, if discretion is exercised, the amount of the award.

150. We address each in turn.

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

151. The respondent is relying on 2 parts of Rule 74 in this application.

151.1 The claimant acted unreasonably in both the bringing of the proceedings and his conduct (Rule 74(2)(a); and/or

151.2 The claim had no reasonable prospect of success (Rule 74(2)(b)).

152. 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. We 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)).

153. In determining whether in bringing the claim the claimant's conduct was unreasonable, we direct ourselves 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. We are

also mindful that the test is whether the claim or defence had no reasonable prospect of success, judged based on the information that was known or reasonably available at the start.

154. Our findings lead us to the conclusion that the claimant's conduct was unreasonable. We have found that she was not pregnant when she was dismissed. We have found she likely found out about her pregnancy (based on the dates she has disclosed – the scan and birth date) around the time of ACAS conciliation. She has constructed a case of pregnancy discrimination from the outset in the knowledge that she was not pregnant at the time of her dismissal. In this regard, she has willfully mislead the respondent and the tribunal. However we are mindful that “a lie on its own would not necessarily be sufficient to found an award of costs, it was for the tribunal to examine the context and the nature, gravity and effect of the lie in determining the unreasonableness of the alleged conduct”. We have done so in these conclusions.
155. From the outset the claimant knew her complaint of pregnancy discrimination and automatic unfair dismissal had no reasonable prospect of success and was based on a lie (the dates of her pregnancy) yet she has pursued these complaints. Even when she was given the opportunity to verify the dates of the pregnancy, and could not do so, she has pursued the claim.
156. For these reasons, we conclude in bringing this claim the claimant's conduct is unreasonable and vexatious. Furthermore, based on our findings that she has repeatedly failed to comply with tribunal orders, and in particular relevant to this complaint, she failed to provide evidence to show the dates of her pregnancy, we conclude the manner in which she has pursued this complaint is unreasonable.
157. We conclude the same for the victimisation complaint and claim for unlawful deduction from wages . She withdrew these on the first day of the final hearing accepting that she had not provided any details of protected acts, alleged detriments or details of what she says she is owed, despite three requests from the tribunal asking her to do so. Given the lack of any detail, had she not withdrawn the claims, we conclude that the claimant had no reasonable prospect of success from the outset as they had literally no substance and her pursuit of them until the August 2025 final hearing was unreasonable.
158. We assessed that the complaints of race and religious discrimination had little reasonable prospect of success and issued deposit orders as the claimant, again, did not provide the details requested. Her decision not to pay these deposit orders, coupled with the lack of requested information, leads us to the conclusion that the claimant herself knew this; we conclude she did not provide the information as she knew the criticism of her presentation skills and any rolling of eyes (denied by the respondent) were in no way linked to her race and religion and for the same reason she did not pay the deposit order.
159. So, the respondent has found itself in a situation where it has defended complaints which from the outset of these proceedings the claimant knew had no reasonable prospect of success. The claimant's decision to bring and pursue them is undoubtedly unreasonable and vexatious.

160. Furthermore, her conduct in pursuing them has been consistently unreasonable. She provided limited information in response to EJ Mitchell's order such that the list of issues before this tribunal did not contain key information such as the dates of her alleged pregnancy. The claimant intentionally misunderstood a clear email from the tribunal during the August 2025 hearing to not attend on day 4. She has not engaged in the proceedings since. The claimant seems to be relying on her pregnancies and a alleged illness of one of her children (not confirmed in evidence to the tribunal) as reasons why she could not check her personal emails as an explanation for her failure to respond to any of the tribunal's correspondence and orders. Her only communication is to request postponement of hearings two days before they take place. We have found she has misled the tribunal about checking her personal email account. We have found she did so and willfully ignored the tribunal's correspondence.
161. In reaching our conclusion that the claimant acted unreasonably in both the bringing and pursuit of these proceedings we have looked globally at the totality of the "nature, gravity and effect" of the conduct: McPherson v BNP Paribas [2004] ICR 1398 CA; Barnsley Metropolitan Borough Council v Yerrakalva [2012] IRLR 78 CA. Globally, in summary, the claimant lied about her pregnancy. She had no factual basis for the other complaints. She did not comply with orders of the tribunal from August 2025 onwards. She requested postponements of hearing with two days notice despite months of notice. She did so with scant evidence to support her request. In so doing she has treated the tribunal and the respondent with contempt.
162. We have found the claimant lied about the dates of her pregnancy and in this regards her conduct is analogous to the claimant in the Arrowsmith case. We remind ourselves that lying in evidence will not automatically result in a finding of unreasonable conduct. However, a false allegation at the heart of the claim may do (Daleside Nursing Home Limited v Mathew UKEAT 0519/08 EAT), as here. However, the facts before us can be distinguished from the case of Kapoor v Governing Body of Barnhill Community High School UKEAT/0352/13 EAT. The effect of this lie has been grave; regrettably we conclude that the lie was intentional from the outset and the respondent has been put to the time and considerable cost of defending the claim in this context .
163. Indeed, we consider her conduct vexatious. In ET Marler Ltd v Robertson [1974] ICR 72 NIRC, the Court defined "vexatious" as arising where "an employee brings a hopeless claim not with any expectation of recovering compensation out of spite to harass his employers and for some other improper motive." Undoubtedly, and understandably, the claimant was upset about her dismissal. That is a natural response, and human nature. She was given reasons for the dismissal. She did not agree. However, her reaction is extreme.
164. Lord Bingham in Attorney General v Barker [2000] 1 FLR 759 QBD, applied in this jurisdiction in Scott v Russell [2013] EWCA Civ 1432 CA made the following observation:

“...the hallmark of vexatious proceedings is in my judgment that has little or no basis in law (or at least no discernible basis); that whatever the intention of the proceeding may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process.”

165. In our judgment, that is exactly what the claimant has sought to do here: she has abused the tribunal process by repeatedly failing to comply with our orders or take account of the guidance we have provided. As a result, the tribunal has afforded a disproportionate amount of its limited resource to a case brought out of spite which was never going to succeed,

Should we exercise the tribunal’s discretion as to whether or not to award costs?

166. In deciding whether to exercise our discretion, we remind ourselves that cost awards in the employment tribunal are the exception rather than the rule. When made they must be compensatory to the receiving party not punitive to the paying party. Foremost in mind is that however, understandably tempting to order costs to punish a party, particularly where there is a finding that the claimant has willfully misled the tribunal, as here, it is legally wrong to take into account the desire to punish: Lodwick v Southwark LBC [2004] ICR 884 CA. Where a tribunal finds there has been misbehavior, as here, any award made is to compensate the receiving party for costs caused by that misbehaviour.

167. Therefore, it is necessary for us to investigate what costs the conduct complained of has caused to the other side.

168. Unanimously, we conclude we must exercise our discretion. We have found the claimant lied and maintained that lie throughout the proceedings. Her conduct in bringing the claim on this basis is vexatious. Rather than pursue the claim she has systematically ignored any guidance from the tribunal and the orders made to assist the claimant to advance her claim or defend the respondent’s applications. Indeed, we consider that both her applications to adjourn attract cost orders as they were done on two days notice in circumstances where she has ample notice of the hearing and when it is simply not feasible that she had not accessed her emails.

169. As we have exercised our discretion, we must make an assessment of the sum to be awarded.

Amount of the costs order

170. In assessing the amount of the costs award, we remind ourselves that the limit of what we may award is costs that are “reasonably and necessarily” incurred: Barnsley Metropolitan Borough Council v Yerrakalva [2012] IRLR 78 CA.

171. The respondent has provided the tribunal with two extremely detailed costs schedules

172. As part of our deliberations we have analysed the spreadsheets prepared by the respondent which sets out, in granular detail, the costs incurred, by fee earner, and with details of work undertaken. We are satisfied that in defending those parts of the claim based on the lie (pregnancy discrimination) or which were withdrawn for lack of any detail (victimisation and unlawful deduction from wages) the respondent has incurred at least £20,000 in costs, all of which was preventable and incurred as a direct result of the claimant's conduct in these proceedings. Indeed, a review of these spreadsheets evidence that the costs incurred by the respondent directly as a result of the claimant's unreasonable conduct exceed £20,000, we are limited to this amount by rule 76(1)a). Given the information in the spreadsheet we conclude that it is fair to make an order for £20,000.

173. Before making this order, we consider it fair and just to take account of the claimant's financial circumstances. Findings of facts about means must be based on evidence adduced, even if that involves drawing inferences. The claimant was ordered to provide financial information in March 2026. She did not do so. The only communication we have from the claimant is her 1 September 2026 email which says she cannot afford any cost order. She has not provided any evidence to support this.

174. Therefore, the only option is for the tribunal to draw inferences. In her employment with the respondent her salary was £92,000. She had another child in March 2026. She has two young children and now lives in Switzerland. We accept that she does not have an income. However, given the level of her salary, it is reasonable for us to conclude she has savings. She may have joint saving with her husband. Has she not, it is reasonable for us to conclude that she would have provided bank statements showing this in response to our March order. There is evidence before us that she owns a property and her husband owns a property in England. They are rented out. There is no evidence to show that the claimant is impecunious as she claims. In fact, two properties suggests otherwise. For this reason we find that the claimant together with her husband has substantial assets.

175. The respondent is awarded £20,000 in costs which arise directly from the conduct of the claimant in bringing and pursuing complaints which from the outset had no reasonable prospect of success and for her unreasonable and vexatious conduct in these proceedings.

Approved by

Employment Judge Hutchings

Date: 21 September 2026

ORDER SENT TO THE PARTIES ON

3 October 2026

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FOR THE TRIBUNAL OFFICE

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