Case Number: 6024917/2025 & 6026206/2025

EMPLOYMENT TRIBUNALS

Claimant: Mr J Kadziolka

Respondent: Plymouth City Council

FULL REASONS

JUDGMENT having been sent to the parties and written reasons having been requested in accordance with Rule 60(4B) Employment Tribunal Procedure Rules 2024 the following full reasons are provided:

Introduction and Overview

1. By order dated 7 May 2026, I directed that claim number 6024917/2025 be listed for a preliminary hearing to determine whether it should be struck out because the tribunal has no jurisdiction to hear it because of a settlement agreement dated 21 August 2025[1].

2. On the same day, the tribunal served claim number 6026206/2025 on the respondent.

3. On 29 July 2026, Employment Judge Woodhead directed that the claims be decided together and also directed "for the avoidance of doubt the hearing on

[1] The date of the settlement agreement was incorrect in the order; it should have been 7 October 2025 but the parties took no point on that. Everyone was clear what the issues are and which the settlement agreement in question was.

2 October 2026 is now listed to consider same matters in respect of both claims as set out in the Record of Preliminary Hearing in the lead claim resulting from the hearing on 7 May 2026."

4. Given that there is no dispute that the parties entered into the settlement agreement of 7 October 2025, the respondent called no evidence at this hearing. The claimant relied upon two statements, the first dated 2 June 2026 and a supplemental statement dated 17 September 2026. The respondent agreed that I should take those statements at their highest.

5. In addition, I received into evidence and considered the respondent's bundle running to 205 pages, the claimant's bundle entitled "Claimant's Disputed Settlement Annex" and the claimant's bundle entitled "Claimant's Open Supplementary Bundle". In addition, both parties made written submissions.

6. Except where stated, page numbers below are to the 205-page bundle.

The Law

7. Rule 38 Employment Tribunal Procedure Rules 2024 provides as follows:

   38.—(1) The Tribunal may, on its own initiative or on the application of a party, strike out all or part of a claim, response or reply on any of the following grounds—

   (a) that it is scandalous or vexatious or has no reasonable prospect of success;

   ...

8. Section 203 Employment Rights Act 1996 sets out restrictions on the ability of parties to contract out of the rights contained within that Act. Section 147 Equality Act 2010 sets out the equivalent provisions in relation to that Act.

9. In *Bathgate v Technip Singapore* [2024] IRLR 326, in the context of considering whether a compromise agreement had had the effect of preventing the claimant from bringing future claims the Court of Session held as follows:

   > For the following reasons we consider that the various protections for the employee built into s 147 do not exclude the settlement of future claims so long as the types of claim are clearly identified and the objective meaning of the words used is such as to encompass settlement of the relevant claim. The requirement that the contract must 'relate to the particular complaint' does not mean that the complaint must have been known of or its grounds at least in existence at the time of the agreement. The EAT suggested that the words 'the particular complaint' were not apt to describe a potential future complaint (para 25). However in our view these words simply require one to ask whether the complaint being made is or is not covered by the terms of the contract. They import no temporal barrier to post-

> employment claims of the kind now being pursued against the respondents. (Paragraph 31).
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> …
>
> The 'particular proceedings' (the equivalent of 'particular complaint' here) must be adequately identified 'by a generic description such as "unfair dismissal" or by reference to the section of the statute giving rise to the claim'. (Paragraph 34)
>
> …
>
> In *McWilliam v Glasgow CC* (2011) UKEATS/0036/10/BI, [2011] IRLR 568, [2011] EqLR 554 Lady Smith noted that it was clear that 'the purpose of the "particular complaint" requirement is to see to it that there is adequate specification in the compromise agreement itself …' (para 30). She added that the provision is not temporal in nature. We agree. All that matters is the presence or absence in the waiver of sufficient identification of the complaint being made. (Paragraph 36)

Relevant Factual Matters

10. The following matters are not in dispute. Although they include legal advice given to the claimant by his trade union, the documents from which the matters are taken have all been disclosed by the claimant and it is clear, having regard to his submissions, that he intends the tribunal to consider those documents and has, thereby, waived any legal professional privilege.

11. The claimant was employed by the respondent as a Social Worker Assistant until 9 May 2025, when he was dismissed.

12. On 12 September 2024 a LADO Allegations Management Meeting took place. The outcome was that the "Group" felt that the claimant was exhibiting controlling and coercive behaviour and the outcome was substantiated (page 115).

13. An occupational health report of 6 October 2024 described the claimant as experiencing significant mental health challenges including depression and anxiety.

14. On 29 January 2025, a disciplinary investigation took place in relation to concerning messages which had been sent to work colleagues, the LADO investigation and attending the workplace under the influence of alcohol (page 136).

15. I have not been taken to any letter which dismissed the claimant but it is not in dispute that the claimant was dismissed.

16. Thereafter, the claimant entered into settlement negotiations, at which point he was represented by Unite the Union.

17. I have not seen all of the documents relating to the settlement negotiations, but the bundle includes

    a. an email dated 8 July 2025 from the claimant's Unite workplace representative stating that the claimant is open to a constructive and confidential resolution to avoid a public tribunal process (page 172),

    b. an email from the claimant to Mr Murphy, his trade union representative and Mr Lock of the respondent, dated 18 August 2025 in which he states:

        > Thank you for sharing the proposal. I've read through it carefully and I am happy with the outcome. I agree with the proposed deal regarding my agreement, and I'm comfortable with you forwarding it to the legal team to ensure everything is in order. (Page 182),

    c. an email dated 15 September 2025 from the claimant to the respondent and Thompsons Solicitors (who by then were representing the claimant) in which the claimant stated that he was disappointed that his solicitor's detailed amendments to the settlement agreement had not been addressed (page 185).

18. In 20 August 2025, a report from the Department of Neurology was sent to (I presume) the claimant's GP. It is a report on the claimant's epilepsy. It does not suggest that the claimant has any issues with capacity.

19. The claimant issued proceedings 6024917/2025 on 3 July 2025 and 6026206/2025 on 14 July 2025. At the date when the settlement agreement was entered into the proceedings had not been served on the respondent.

20. The settlement agreement was entered into on 7 October 2025 and included a number of clauses including the following

    11.1 This Agreement is made without any admission of liability on the part of the Employer and its terms are in full and final settlement of the claims set out in clauses]11.2 and 11.3, but excluding, for the avoidance of doubt, any claim to enforce the terms of this Agreement and any latent free-standing personal injury claim and accrued pension rights.

    11.2 Clause 11.1 applies to all claims, complaints, rights of action or proceedings (if any) under common law or contract, under English and/or EU law or otherwise, and in any jurisdiction, whether expressly contemplated or not, and/or which may arise or of which you may become aware in the future, which you have or may have, or have brought or may bring, against the Employer or its current or former officers or employees arising out of or in connection with your employment and/or offices held or its/their termination, including, but not limited to, the following (each of which is intimated and waived):

        11.2.1 any claim for wrongful dismissal or breach of contract;

11.2.2 any claim for physical or psychiatric illness arising out of or relating to any acts of discrimination, harassment, victimisation or detriment;

11.2.3 any stress-related claims and/or any claim relating to depression;

11.2.4 any claim for distress, anxiety and/or financial loss caused by harassment under the Protection from Harassment Act 1997;

11.2.5 any other personal injury claims.

11.3 Clause 11.1 applies to all other claims, complaints, rights of action or proceedings (if any) under statute under English and/or EU law or otherwise, and in any jurisdiction, whether expressly contemplated by the parties or not, and/or which may arise or of which you may become aware in the future, which you have or may have, or have brought or may bring, against the Employer or its current or former officers or employees arising out of or in connection with your employment and/or offices held or its/their termination, including, but not limited to, the following (each of which is intimated and waived):

11.3.1 any claim for unfair dismissal under section 111 of the Employment Rights Act 1996;

11.3.2 any claim fora redundancy payment under section 163 of the Employment Rights Act 1996 or otherwise;

11.3.3 any claim for unauthorised deductions from wages or unauthorised receipt of payments under section 23 of the Employment Rights Act 1996;

11.3.4 any claim for a guarantee payment under section 34 of the Employment Rights Act 1996;

11.3.5 any claim for detriment under section 48 of the Employment Rights Act 1996 in relation to jury service, health and safety, working time, trustees of occupational pension schemes, employee representatives, time off work for study or training, protected disclosures, leave for family and domestic reasons, tax credits, flexible working;

11.3.6 any claim relating to time off work for public duties, to look for work or arrange training, for antenatal care, to accompany to antenatal appointments, to attend adoption appointments, for dependants, for pension scheme trustees, for employee representatives, for a young person for study and training, under sections 51, 54, 57, 57ZC, 57ZF, 57ZH, 57ZM, 57ZQ, 57B, 60, 63 and 63C of the Employment Rights Act 1996;

11.3.7 any claim relating to study or training under section 63I of the Employment Rights Act 1996;

11.3.8 any claim relating to suspension on medical or maternity grounds under section 70 of the Employment Rights Act 1996;

11.3.9 any claim relating to parental leave under section 80 of the Employment Rights Act 1996;

11.3.10 any claim under section 80H of the Employment Rights Act 1996 relating to flexible working;

11.3.11 any claim relating to a written statement of particulars of employment, an itemised pay statement and/or a statement of reasons for dismissal under sections 11 and 93 of the Employment Rights Act 1996;

11.3.12 any claim forequality of terms under sections 120 and 127 of the Equality Act 2010;

11.3.13 any claim for pregnancy or maternity discrimination, direct or indirect discrimination, harassment and/or victimisation related to sex, marital or civil partnership status, pregnancy or maternity or gender reassignment, or harassment of a sexual nature under section 120 of the Equality Act 2010;

11.3.14 any claim for direct or indirect discrimination, harassment and/or victimisation related to race under section 120 of the Equality Act 2010;

11.3.15 any claim for direct or indirect discrimination, harassment and/or victimisation related to disability and/or discrimination arising from disability and/or failure to make reasonable adjustments under section 120 of the Equality Act 2010;

11.3.16 any claim for direct or indirect discrimination, harassment and/or victimisation related to religion or belief under section 120 of the Equality Act 2010;

11.3.17 any claim for direct or indirect discrimination, harassment and/or victimisation related to sexual orientation under section 120 of the Equality Act 2010;

11.3.18 any claim for direct or indirect discrimination, harassment and/or victimisation related to age under section 120 of the Equality Act 2010;

11.3.19 any claim relating to deduction of unauthorised subscriptions, failure to comply with certificate of exemption or objection to contributing to political fund, refusal of employment on grounds relating to trade union membership, an offer contravening the right not

be offered an inducement relating to trade union membership or activities or collective bargaining, detriment related to trade union membership or activities, time off or pay for carrying out trade union duties or learning representative duties and/or time off for trade union activities under sections 68A, 87, 137, 145A, 145B, 146, 168, 168A, 169 and 170 of the Trade Union and Labour Relations (Consolidation) Act 1992;

11.3.20 any claim for remuneration for the protected period following the making of a protective award under section 192 of the Trade Union and Labour Relations (Consolidation) Act 1992;

11.3.21 any claim for failure to allow access to records, for non-compliance with a notice of underpayment and/or detriment under sections 11, 19D and 24 of the National Minimum Wage Act 1998;

11.3.22 any claim for compensation for damage suffered as a result of a breach of the United Kingdom General Data Protection Regulation (UK GDPR) and/or the Data Protection Act 2018;

11.3.23 any claim relating to failure to allow or threatened failure to allow accompaniment by a companion under section 11 of the Employment Relations Act 1999;

11.3.24 any claim for detriment relating to automatic pension scheme membership for jobholders under section 56 of the Pensions Act 2008;

11.3.25 any claim relating to working time or holiday pay under regulation 30 of the Working Time Regulations 1998;

11.3.26 any claim under regulations 27 and 32 of the Transnational Information and Consultation of Employees Regulations 1999;

11.3.27 any claim relating to less favourable treatment or detriment under regulation 8 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000;

11.3.28 any claim relating to less favourable treatment or detriment under regulation 7 of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002;

11 3.29 any claim under regulations 29 and 33 of the Information and Consultation of Employees Regulations 2004;

11.3.30 any claim under paragraphs 4 and 8 of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006;

11.3.31 any claim for refusal of employment or employment agency services and/or detriment for a reason relating to a prohibited list

under regulations 5, 6 and 9 of the Employment Relations Act 1999 (Blacklists) Regulations 2010;

11.3.32 any claim in relation to the right to be accompanied under regulation 17 of the Employee Study and Training (Procedural Requirements) Regulations 2010;

11.3.33 any claim under section 80N of the Employment Rights Act 1996 that the employer has unreasonably postponed a period of carer's leave, or has prevented or attempted to prevent the employee from taking carer's leave;

11.3.34 any claim in relation to failure to comply with obligations under the Human Rights Act 1998; and

11.3.35 any claim under any provision of directly applicable and/or directly effective European law. 7

11.5 You agree to refrain from instituting any claim against the Employer before an employment tribunal, and from making any application for early conciliation to the Advisory, Conciliation and Arbitration Service (Acas), in respect of any claim under the statutory and/or contractual provisions set out in Clause 11.

11.6 You represent and warrant that:…

> 11.6.6 neither you nor anyone acting on your behalf has made any application to the Advisory, Conciliation and Arbitration Service (Acas) or issued proceedings against the Employer or any of its directors, members, officers or employees in the employment tribunal, High Court or County Court or any other forum in respect of any claim in connection with your employment or holding of office or directorship or its or their termination and that neither you nor anyone acting on your behalf will present such an application or claim;

11.8 You acknowledge that the Employer is entering into this Agreement and will pay the Compensation Payment in specific reliance on the representations, warranties and undertakings you have given in this agreement and that should any of those representations, warranties or undertakings be untrue or be breached, without prejudice to any other remedy the Employer may have, the Employer will be entitled to not pay, or (if already paid or provided) to the immediate repayment of a sum equivalent to the Compensation Payment less an amount equal to any PAYE Deductions actually made from the Compensation Payment already paid or provided by the Employer and any Excess Tax actually paid by you under Clause 5 (Net Compensation Payment). You acknowledge that the Employer will be entitled to recover the sum as a debt on demand and will be released from any continuing obligations under this Agreement.

> 11.9 You agree that, without prejudice to any other rights or remedies of the Employer, if you institute or continue any proceedings against the Employer that include a claim or claims of a kind set out in Clause 11 and if and to the extent that you have not repaid the Net Compensation Payment pursuant to Clause 11.8, and an award is made to you in respect of such claim or claims:
>
> > 11.9.1 if the award (after any deductions for tax on the award) exceeds the Net Compensation Payment, the Net Compensation Payment will be set off in full against the award; or
> >
> > 11.9.2 if the award (after any deductions for tax on the award) is less than the Net Compensation Payment, you will pay to the Employer the difference between the Net Compensation Payment and the award (after any deductions for tax on the award).
>
> 12.4 Upon receipt by the Employer's authorised legal representative of the Agreement executed by all the parties and the signed Adviser's certificate, notwithstanding that it is headed ‘subject to contract' and ‘without prejudice’, it will be treated as on the open record and binding on the parties.

21. The claimant’s first witness statement says, and I accept, that when the claimant signed the settlement agreement he did so without the full material factual picture. He explains that what he means by that is that in relation to the LADO outcome letter he was not given the full evidence, referral material, professional information or reasoning showing why the allegation had been substantiated. He points out, and I accept, that at the disciplinary interview on 29 January 2025 the LADO outcome was one of the formal allegations being investigated but he still did not have the underlying/origin LADO records.

22. The claimant also says, in his witness statement that he was mentally unwell at the point when he signed his settlement agreement. He clarifies the position in his final skeleton argument at paragraph 44, stating that he does not ask the tribunal to infer legal incapacity merely from diagnosis, treatment or a fit note, nor does he seek to convert the medical evidence into a developed plea of duress or undue influence where the necessary legal elements have not been established. He states that his case remains that the documented health and pressure evidence forms part of the objective factual context in which the agreement was considered and executed.

23. Having seen the correspondence between the claimant and his trade union representatives, as well as his correspondence with the respondent, there is no reason to think the claimant may have lacked capacity. The claimant was, of course, represented by lawyers at the point when he signed the settlement agreement and there is no reason to doubt that they would have picked up on any lack of capacity. I did not understand the claimant’s argument, at this hearing, to be that he did lack capacity at the time he entered into the

agreement. At this hearing the claimant focused only on his arguments about construction of the settlement agreement.

24. The claimant's witness statement also refers to the fact that he was under pressure when he signed his settlement agreement. I do not doubt that was right. Any person in the position of the claimant is bound to be under pressure. He had lost his job and, presumably, his main if not only, source of income. The LADO referral was bound to add pressure to the situation.

25. At paragraph 14 of his witness statement, the claimant states that he was told that the settlement offer was the best offer available and the advice could not properly address facts that had not been disclosed to him. There is no reason to doubt that the offer was the best one available and the statement that advice could not properly address facts which had not been disclosed to him is patently correct. The claimant goes on to say that, in December 2025, he had a call from his solicitor who had advised him and that the respondent asked him (the solicitor) to call the claimant. The claimant understood that as pressure to withdraw the tribunal claim. If that had been the purpose of the call then the claimant was being given sound legal advice for the reasons I will go on to set out.

26. There is no basis for concluding, that any improper pressure was placed upon the claimant by his own trade union or legal team. It may well be that there was a degree of pressure because the respondent would not agree a settlement agreement in the terms the claimant would have desired, but beyond that, there is no evidence for finding that any pressure was being applied by the respondent or that the claimant's free will was over-borne by any such pressure.

Analysis and conclusions

27. The opening section of the claimant's final skeleton argument states as follows:

> 2. The Claimant does not dispute that settlement negotiations took place, that he received independent legal advice, that he signed a settlement agreement and that payments or other benefits were provided under it. Nor does he contend that a properly drafted qualifying settlement agreement cannot, as a matter of principle, compromise Employment Tribunal proceedings.
>
> 3. The Claimant's position is narrower. The Tribunal is asked to determine the proper legal effect of this particular Agreement, construed as a whole and against the actual chronology, including the fact now accepted by the Respondent that both Employment Tribunal claims had already been presented before the Agreement was signed.
>
> 4. Hinton v University of East London [2005] EWCA Civ 532, Bathgate v Technip Singapore Pte Ltd [2023] CSIH 48 and Clifford v IBM United Kingdom Ltd [2024] EAT 90 establish the relevant principles: appropriately identified statutory claims can be compromised and, in

> appropriate circumstances, sufficiently clear wording can extend to future or unknown claims. Those principles do not dispense with the prior question of what this particular Agreement, objectively construed as a whole, actually precludes.
>
> 5. The Claimant applies those authorities rather than avoiding them. The live question is whether the Respondent can reach its conclusion by isolating clauses 11.2 and 11.3 from clauses 11.5, 11.6.6, 11.8, 11.9 and 12.4 and from the admitted chronology that both Tribunal proceedings already existed before execution.

28. That, in essence, encapsulates the claimant's argument as advanced at this hearing. Although the skeleton argument goes on for a further 15 pages, it is largely repetition or expansion of that argument.

29. In my judgment paragraphs 11.2 and 11.3 clearly covered all of the claims which the claimant had presented at the time when he entered into the settlement agreement. There was nothing in either of those claims which was not covered by the list of claims in paragraph 11.2 and 11.3. The claims being advanced in both claim forms are clearly identified within the settlement agreement.

30. The claimant's argument that the claims he had already presented were not covered is, in my judgment, without merit. The claimant seeks to argue that, in some way, clause 11.6.6 assists him. However, by clause 11.6.6 he had represented and warranted to the respondent that he had not issued proceedings against the employer. That was simply untrue. The claimant, therefore, appears to be attempting to rely upon his own misrepresentation/ breach of contract in order to avoid the terms of the contract. It is not open to him to do so. His misrepresentation/ breach of contract might have enabled the respondent to avoid its own obligations under the settlement agreement but the respondent has chosen not to do that. The respondent seeks to enforce the agreement. The claimant cannot prevent it from doing so by relying upon his own wrongdoing.

31. Clause 11.5 does not assist the claimant because he had already made the claims to which this application relates and clause 12.4 does not assist him because it simply sets out the point at which the agreement becomes binding.

32. Both clauses 11.2 and 11.3 are clear in their terms, they cover the claims which had already been issued. The effect of those clauses is that the claims in both sets of proceedings have been compromised. The tribunal lacks any further jurisdiction to consider them.

33. The claimant did not, in fact, advance an argument that the settlement agreement was void for material non-disclosure at this hearing. Had he done so, I would have rejected that argument. The respondent was under no obligation to disclose any documentation to the claimant at the point when he entered into the settlement agreement. The claimant knew that he did not have all of the documentation relating to the LADO proceedings but chose to

enter into the settlement agreement in any event. There is no basis for seeking to avoid the compromise agreement because of non-disclosure.

34. Again, the claimant did not, at this hearing, advance an argument that the agreement could be avoided because of lack of capacity or because of duress but, had he done so, given the factual findings that I have set out above, there would be no basis for avoiding the agreement for those reasons.

35. In those circumstances I am entirely satisfied that the two sets of proceedings to which this judgment relates have been compromised within the settlement agreement and the tribunal has no jurisdiction to consider them further. They are struck out.

Costs

The Law

36. The Employment Tribunal Procedural Rules 2024 provide as follows in respect of costs.

> **72**
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> In this Part—
>
> "paying party" means a party liable to pay costs;
>
> "preparation time" means time spent by the receiving party (including by any of the receiving party's employees or advisers) in working on the case, except for time spent at any final hearing;
>
> "receiving party" means a party entitled to be paid costs.
>
> **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.

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(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) ….

(3) …

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(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;

(b) the receiving party the whole or a specified part of the costs of the receiving party, with the amount to be paid being determined—

(i) in England and Wales, by way of detailed assessment carried out either by a county court in accordance with the Civil Procedure Rules 1998, or by the Tribunal applying the same principles;

(ii) in Scotland, by way of taxation carried out either by the auditor of court in accordance with the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019, or by the Tribunal applying the same principles;

(c) another party or a witness, as appropriate, a specified amount in respect of necessary and reasonably incurred expenses for the purpose of, or in connection with, an individual's attendance as a witness at a hearing;

(d) an amount agreed between the paying party and the receiving party in respect of the receiving party's costs.

(2) Where the costs order includes an amount in respect of fees charged by a lay representative, for the purposes of the calculation of the order, the hourly rate applicable for the fees of the lay representative must not exceed the rate under rule 77(2) (the amount of a preparation time order).

(3) A costs order under sub-paragraphs (b) to (d) of paragraph (1) may exceed £20,000.

…

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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.

37. It was held in *Barnsley Metropolitan Borough Council v Yerrakalva [2011] EWCA Civ 1255*, *[2012] IRLR 78* that "The ET's power to order costs is more sparingly exercised and is more circumscribed by the ET'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 for the litigation. In the ET costs orders are the exception rather than the rule. In most cases the ET does not make any order for costs."

38. Harvey on Industrial Relations summarises the position in relation to the general approach to costs as follows:

> [1046.03]
>
> Whether the origin of consideration of costs or a PTO is the tribunal's own initiative, or an application, the same three-stage process must be adopted in all cases. Firstly, the tribunal must make findings of fact about the paying party's conduct. The tribunal must consider whether, on those findings, one or more of the statutory thresholds in r 74 are met (for example, a finding that there was breach of a tribunal order, that the conduct of proceedings was unreasonable in a particular respect, or that the claim had no reasonable prospects of success). The tribunal will need to explain in its reasons which aspects of any conduct fulfilled which part of the r 74 test. Secondly, if the r 74 threshold has been met the tribunal will go on to consider whether to

> exercise its discretion to award costs or a PTO (see Ayoola v St Christopher's Fellowship UKEAT/0508/13 (6 June 2014, unreported) at [17]–[18]; Robinson v Hall Gregory Recruitment Ltd [2014] IRLR 761, EAT, at [15]). In doing so the tribunal must take account of all the relevant circumstances including, where appropriate, the paying party's ability to pay any costs order. Thirdly, and only when the first two stages have been completed, a tribunal may proceed to consider the amount of the award payable and the form of any award, under SI 2024/1155 r 76 (formerly r 78 of the 2013 Tribunal Rules) (see Haydar v Pennine Acute NHS Trust UKEAT/0141/17 (12 December 2017, unreported), at [25]).
>
> [1046.04]
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> It is not permissible for a tribunal to proceed from the first stage to the third stage described above without considering the second; that is, it must not assume that, because there are grounds for making an award, a costs order must therefore be made (Abaya v Leeds Teaching Hospital NHS Trust UKEAT/0258/16 (1 March 2017, unreported)). Likewise, it is not permissible for the tribunal to deal with stage two before addressing stage one, that is, deciding to make an award of costs before identifying the statutory ground giving rise to it. It is also wrong, moreover, for the tribunal to put the burden on the paying party to show why costs should not be awarded, especially before satisfying itself that there had been unreasonable conduct justifying an award under r 76 (Haydar v Pennine Acute NHS Trust UKEAT/0141/17 (12 December 2017, unreported), at [37]–[38]).

39. I adopt Harvey's statement of the law in respect of the three-stage process which I must apply.

40. In respect of an application for costs on the basis that a claim had no reasonable prospect of success, Harvey comments as follows: "When considering whether to award costs in respect of a party's conduct in bringing or pursuing a case that is subsequently held to have lacked merit, the type of conduct that will be considered unreasonable by a tribunal will obviously depend on the facts of the individual case, and there can be no hard-and-fast principle applicable to every situation. In general, however, it would seem that the party must at least know or be taken to have known that his case is unmeritorious"

Analysis

41. The respondent applies for costs in the amount of £7949 – £8449 (the variation being a lack of clarity as to counsel's fees). The respondent internal legal costs amount to £3949 and the balance is in respect of counsel's fees.

42. The claimant has disclosed a letter from Unite the Union to him dated 21 May 2026 which states:

> Thank you for your email dated 8th May 2026, notwithstanding the preliminary hearing you attended on the 7th May 2026 you did sign a legal binding settlement agreement which was served on the 22nd September 2025 and therefore our advice is that you withdraw your Employment Tribunal claim. You received independent legal advice as to the terms and the effects of signing the agreement including upon your ability to bring claims to the Employment Tribunal.
>
> The settlement agreement you signed applied a waiver of all complaints, whilst Plymouth City Council solicitors have not yet sent a cost warning letter to you setting out why they believe your claim has no reasonable prospects for success and they will clearly cite the settlement agreement. As you are in breach of the settlement agreement then your employer can pursue the breach against you, recover the settlement monies and the legal costs of pursuing the breach. As you are clearly in breach of the agreement, the union would be unable to provide legal assistance in the event of any legal action against you for breaching the agreement.

43. On 27 July 2026 the respondent sent a cost warning letter to the claimant warning that its cost would be likely to exceed £5000.

44. I asked the claimant why he had pursued the claims in the light of those two letters but he was unable to give me any explanation. I asked him if he wanted to say anything as to why he should not pay the costs but he simply stated that he did not have any money.

45. The pursuit of these claims once the claimant had entered into a settlement agreement was unreasonable behaviour. From then on they never had any reasonable prospect of success. The claimant should have complied with his obligations under the settlement agreement and he should have recognised that the tribunal would have no jurisdiction to consider these claims.

46. In those circumstances the threshold for making a costs order has been met. I must then consider whether, in the exercise of my discretion, I should order the claimant to pay the costs. I see no reason why he should not and every reason why he should. He has been warned not only by the respondent's solicitors but also by his own trade union that these proceedings were inappropriate. I can see no reason why he did not heed the advice he had been given. The respondent is a publicly funded body. I see no reason why the taxpayer should be required to pay for the refusal by the claimant to comply with the obligations of the settlement agreement and, thereafter, heed sound advice.

47. I have considered the claimant's means and accept that he is impecunious. In the circumstances of this case, I do not find that is a reason why I should not order him to pay the costs, given his deliberate decision to continue with the proceedings even when advised by his own trade union that he should not; the claimant should not be able to use his impecuniosity as a shield to avoid the consequences of his decisions.

48. The respondent seeks an order that the claimant pay its costs from 19 December 2025. That is some time after the settlement agreement was entered into and so a reasonable point from which to consider the position. In my judgment the claimant's behaviour has caused it to incur all of the costs from that date. In terms of the sums claimed by the respondent's solicitors, the hourly rates claimed are extremely reasonable and the time claimed at 41 hours is by no means excessive. The claimant should pay those sums. I make no criticism of counsel's fees but, looking at matters in the round, and, at this stage, again taking account of the claimant's means, I assess the costs that the claimant must pay at £5500.

Employment Judge Dawson
Date: 5 October 2026

REASONS SENT TO THE PARTIES ON
20 October 2026

Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/