EMPLOYMENT TRIBUNALS

Claimant: Mrs D Awonaike-Salau

Respondent: Health Education England (1)
Dr M Hanley (2)
Dr P Gibson (3)

HELD AT: Manchester **ON:** 15 October 2019

BEFORE: Employment Judge Humble

REPRESENTATION:

Claimant: Mr O Ogunyanwo, Consultant
Second Respondent: Mr B Williams, Counsel
First and Third Respondents: Not in attendance

JUDGMENT

The Judgment of the Employment Tribunal is that:

1. The claimant acted unreasonably in bringing the proceedings.
2. The claimant is ordered to pay the respondent's costs in the sum of £8217.

REASONS

The Hearing

1. The costs hearing took place on the morning of 15 October 2019. It followed the dismissal of the claim upon withdrawal by the claimant at a preliminary hearing on 14 January 2019.
2. The claimant was represented at the costs hearing by Mr Ogunyanwo, a consultant, and the second respondent was represented by Mr B Williams of Counsel. The first and third respondents to the proceedings did not make any

cost applications and did not attend the hearing. The second respondent is referred to hereafter as "the respondent" or "Dr Hanley".

3. The Tribunal were presented with four separate bundles of documents. The first bundle extended to 157 pages and included the claimant's witness statement, an income and expenditure statement and some supporting documents. The second bundle extended to 250 pages and comprised the claimant's substantive bundle for the hearing. The third bundle extended to 221 pages and comprised the joint bundle of documents from the preliminary hearing scheduled for 14 January 2019. The fourth bundle was the respondent' 'supplementary bundle' for the costs hearing and ran to 31 pages. The claimant referred to a further document during the course of the hearing and this was produced and added to the end of the second bundle, comprising six pages, numbered 149-152A (the numbering having been taken from a different bundle than the four bundles put before the Tribunal).

4. The Tribunal took some time to read the claimant's witness statement, the pleadings and orders in the case and the documents to which it was specifically referred by the parties. The claimant gave oral evidence and oral submissions were then taken from the representatives with reference to the written submissions which they had prepared. The submissions were concluded on the afternoon of 15 October 2019 and Judgment was reserved.

The Issues

5. There were two principal issues for the Tribunal to determine, which were summarised and agreed at the outset of the hearing as follows:

   a) whether the claimant had acted vexatiously, abusively, disruptively or otherwise unreasonably in bringing the proceedings or in the way that the proceedings were conducted; and

   b) whether the claim had no reasonable prospect of success.

6. There were two parts to the allegation that the claimant acted vexatiously or otherwise unreasonably. Firstly, it was said that the claimant acted vexatiously or unreasonably in bringing the claim against the respondent since an earlier application to join the respondent to existing proceedings, containing essentially the same claims and based upon the same facts, had been refused by an earlier Tribunal. Secondly, and irrespective of the findings on that point, it was said that the claimant acted unreasonably in leaving it until the morning of the preliminary hearing on 14 January 2019 to withdraw the claim.

7. There was initially some dispute as to whether the claimant had correctly identified the ACAS early conciliation certificate numbers in his claim form such that the claim was not properly issued, but the respondent conceded this was a "technical point" and it was not pursued for the purposes of the costs application.

The Law

8. Rule 76 of Schedule 1 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 provides as follows:

"(1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, 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) or the way that the proceedings (or part) have been conducted; or

(b) any claim or response had no reasonable prospects of success..."

Rule 78 provides that:

"(1) A costs order may –

(a) order the paying party to pay the receiving party a specified amount, not exceeding £20,000 in respect of the costs of the receiving party…"

Rule 84 provides:

"In deciding whether to make a costs, preparation time, or wasted costs order, and if so in what amount the tribunal may have regarding the paying parties…ability to pay."

9. The Tribunal were referred to the following cases:

Lordwick -v- London Borough of Southwark [2004] IRLR 554 CA
Gee -v- Shell UK Limited [2003] IRLR 82, CA
Hambly -v- Rathbone Community Industry Limited (1999) 617 IRLR 10, EAT
Southwark London Borough Council -v- Afolabi [2003] IRLR 220, CA
Machine Tool Industry Research Association -v- Simpson [1988] IRLR 212, CA
Senyonjo -v- Trident Safeguards Limited UKEAT/0316/04
Anyanwu -v- South Bank Student's Union and South Bank University [2001] IRLR 305, HL
Essias -v- North Glamorgan NHS Trust [2007] ICR 1126, CA
Owusu v LFCDA [1995] IRLR 574, EAT
Cast -v- Croydon College [1998] IRLR 318
Hendricks -v- Commissioner of Police of the Metropolis [2003] IRLR 96, CA
Millin –v- Capsticks Solicitors LLP UKEAT/0093/14

The Tribunal also had reference to the case of Raggett -v- John Lewis PLC [2012] IRLR 906, EAT.

The Findings

The Employment Tribunal made the following findings on the balance of probabilities (the Tribunal did not make findings upon all the matters presented but made material findings of fact upon those matters relevant to the issues to be determined):

10. The background to this matter is that the claimant issued claims against Central Manchester University Hospitals NHS Foundation Trust and Dr Shoneen Abbas

on 24 August 2017 (pages 1-20 of the third bundle). The causes of action in the particulars of claim could not be discerned by this Tribunal with any precision but it was evident that the claimant was seeking to pursue claims of direct discrimination and harassment, based upon the protected characteristic of her race, in respect of alleged less favourable treatment received from Dr Abbas and "*her anonymous colleagues*". In essence, this appeared to rely upon alleged unwarranted criticism of the claimant's medical practice which was said to put her at a disadvantage and damaged her career development.

11. On 23 October 2017 the claimant applied to amend the claim to add Pennine Acute Hospitals NHS Trust as a respondent to the proceedings. Following a preliminary hearing on 16 October 2017 the claimant provided some further particulars of the claim and Pennine Acute Hospitals NHS Trust ("Pennine") was added as a respondent.

12. On 27 February 2018 the claimant applied to amend the claim to add Dr Marie Hanley, the respondent to these proceedings, and Dr P Gibson to the existing proceedings. The claims against Dr Hanley were summarised by employment Judge Slater in a case management order dated 13 March 2018 (74-81 of bundle 4), and the content of that order required some examination. EJ Slater firstly explained the relationship of the parties and the named individuals as follows:

"*At relevant the times the claimant has been a final year trainee doctor…trainee doctors have an employment contract during their training with a "Lead Employer Trust" during the training period. The claimant had an employment contract with Pennine Acute NHS Trust during her training period as the Lead Employer Trust.*

During the training period trainee doctors undertake training placement at a Host Trust Hospital. The claimant undertook the training placement with [Manchester University NHS Foundation Trust]…Dr Marie Hanley, who the claimant wishes to add as a respondent was the claimant's Training Programme Director…Dr Hanley is also a consultant and Clinical Director for Geriatric Services employed by Manchester University NHS Foundation Trust. The claimant argues that Dr Hanley acted as an agent of [Pennine Acute NHS Trust] when she was acting in her role..."

She explained the claimant's rationale for the application to add the respondent as follows:

"*14. I then sought to clarify what the claimant was applying to add to her claim. The claimant wishes to add Dr Hanley and Dr Gibson as named respondents and bring complaints against them and Pennine Acute NHS Trust in respect of their actions. One of these complaints (about the 9 May 2017 report) is already part of the claim against [the other respondents] but the claimant wishes to add Dr Hanley as a further named respondent to this complaint.*

The complaints which the claimant wishes to pursue against Dr Hanley and the third respondent as complaints of direct race discrimination are as follows:

14.1 Dr Hanley not recusing herself from the interview panel when the claimant was interviewed for a consultant position.

14.2 The 9 May 2017 report (already part of the claim against [the other respondents]).

14.3 In August 2017, Dr Hanley talking to Dr Gibson about the 9 May 2017 report and the problems she had been having with the claimant, spreading rumours about the claimant."

13. EJ Slater refused the application to amend the claim to allow the complaints of Dr Hanley not recusing herself on the interview panel and in relation to the 9 May 2017 report. Her reasons for doing so were as follows:

"The complaints about the 9 May 2017 report already forms part of the claim against [the other respondents]. The claimant could have included Dr Hanley as a named respondent at the time she presented her claim had she wished to do so, or, at the latest by the time of the application to amend on 27 October 2017. She did neither and has provide no explanation why she did not do so. It does not appear that adding Dr Hanley as a further respondent will provide the claimant with any additional remedy that she could not obtain, if successful, against the existing respondents to that claim. The complaint, if presented now, against Dr Hanley would be considerably out of time. I consider that the prejudice to Dr Hanley in having to join these proceedings at this late stage outweighs any possible benefit to the claimant in joining her as a respondent in relation to this complaint.

In relation to the complaint that Dr Hanley did not recuse herself from the interview panel, this is a matter which could have been raised at a much earlier stage, certainly no later than the application to amend in October 2017. The claimant was clearly aware who had been on her interview panel. The claim as amended in October 2017 includes reference to circulation of a report on the eve of the claimant interview as a consultant. Dr Hanley sending this report is already included in the claim against [Pennine]. Had the claimant wish to complain that the failure to recuse was also an act of discrimination, she could have raised it no later than this time. She did not do so and has provided no good explanation for not doing so. The complaint would be considerably out of time if presented now. The claimant has provided no basis for her belief that failure to recuse was an act of direct race discrimination. It is far from clear that the claimant would be losing the possibility of pursuing a claim with a reasonable prospect of success if her application is refused. In all the circumstances, I consider that the prejudice to Dr Hanley in having to join these proceedings at this late stage outweighs any possible benefit to the claimant in joining her as a respondent in relation to this complaint."

14. EJ Slater went on to find that the application to amend the claim to the complaints about Dr Gibson should proceed to determination at a further preliminary hearing and that "*since the complaints about Dr Hanley talking to Dr Gibson about the 9 May 2017 report and the claimant is closely linked with these complaints, I have decided that the application to amend the claim to include that complaint should also be considered at that preliminary hearing.*"

15. A further preliminary hearing took place on 8 May 2018 at which the application for permission to amend the claim so as to add Dr Hanley and Dr Gibson as respondents were refused. EJ Franey recorded the following in the order accompanying his Judgment (page 116 bundle 3):

    "I refused those applications which related to the conduct of Dr Hanley and Dr Gibson from August 2017 to the end of October 2017. It followed that neither of them was added as a respondent. I was satisfied that the claimant had all the information available to them by 30 October 2017 when she read the "dossier" supplied by Dr Gibson to the relevant panel, within the primary time limit for new allegations, and yet her application to amend was not made until (at the earliest) 27 February 2018. This was a substantial amendment pleading new causes of action, new factual matters and introducing new respondents and therefore it weighed heavily against the claimant that it was made out of time. No medical evidence was provided to support an assertion that the claimant was too unwell to give instructions to a representative to lodge this claim, and there was no good reason why it had not been presented as a written amendment within time. Permission was therefore refused."

16. On 29 September 2018, the claimant issued a new claim against Health Education England, Dr Hanley and Dr Gibson, the claim to which this costs application relates (case number 2415208/2018). The claims were for direct discrimination, victimisation and harassment because of the claimant's race, but the Tribunal again had difficulty in discerning the causes of action in the particulars of claim (pages 138-146 bundle 3). The chronology of events in the particulars covered the same period as that in the original particulars of claim, and the events relied upon in the main appeared to correspond with those in the original proceedings.

17. It appeared that, having not included Dr Hanley and Dr Gibson as respondents in the original proceedings and having had an application to amend the claim to add them as parties refused, the claimant had now simply issued fresh proceedings to bring them in as parties. This was certainly the view of the respondents. The basis of Dr Hanley's grounds of resistance was that the claim was an abuse of process since it was an attempt to circumvent the rulings of Employment Judges Slater and Franey. It submitted that issue estoppel applied and, further or in the alternative, the rule in *Henderson v Henderson* applied. In any event it was said that the conduct of the claimant and/or her representative was said to be vexatious, unreasonable and an abuse of process and the claim

had no reasonable prospect of success. It was also said that the claims were substantially out of time, relying upon a time frame from early 2017 through to 20 December 2017. The other respondents to the claim, Health Education England and Dr Gibson entered a response making very similar arguments, and all of the respondents sought to have the claims struck out on those grounds.

18. Following a further preliminary hearing for case management purposes on 20 December 2018, the case was listed for a public preliminary hearing on 14 January 2019 to determine the respondents' application as to whether the claim should be struck out.

19. On the morning of the hearing on 14 January 2019 the parties presented before the Tribunal to explain that the claimant had decided to withdraw her claim. The claimant gave her reasons for withdrawing the case as a "waste of public funds", her health having suffered, and being unable to continue to fund the proceedings. It was also said by the claimant's representative that the claimant intended to withdraw the original proceedings and that she was seeking a letter of apology from the respondent. The Tribunal indicated that it was only dealing with the case before it and not the original proceedings, and the issue of an apology was a matter between the respondent and the claimants. The respondents had not agreed to provide an apology and the Tribunal were not asked to approve any consent order. The Tribunal explained that, given that the claimant had requested a withdrawal, it proposed to dismiss the current proceedings upon withdrawal by the claimant and the claimant confirmed her consent to that course of action. Judgment was issued to the parties in the following terms:

"The Judgment of the Employment Tribunal is that the claims brought under case number 2415208/2018 are dismissed upon withdrawal, the claimant having given her consent to that course at the hearing."

20. A letter was produced in the bundle by the claimant, dated 14 January 2017. This was referred to by the claimant's representative in submissions as the letter of withdrawal relating to these proceedings but in fact this letter related to the original proceedings; the claim against Dr Hanley was not referred to in that letter. The reasons given for the withdrawal in that letter were however the same as those relied upon before this Tribunal in respect of the claimant withdrawing her claims in these proceedings and so it remained relevant. These were:

"(1) the claimant is concerned with the waste of public funds in a case which should have been rescued (sic) by the respondents at an early stage.

(2) the claimant's health has suffered immeasurably owing to the management of her complaints which has lasted two years.

(3) the claimant's finances in the funding this case have become untenable.

The claimant seeks an apology with regards to the reports which were circulated prior to the consultant interview by Dr Shoneen Abbas (the second respondent).”

21. The original proceedings were later dismissed on withdrawal by Regional Employment Judge Parkin on 11 February 2019.

22. The Tribunal took some time at the costs hearing to seek a coherent explanation as to the manner in which these proceedings were said to differ from matters relied upon in the original claim, and why these proceedings were brought when attempts to add Dr Hanley to the original proceedings had already been refused. It was not easy to identify the causes of action in the particulars of claim within these proceedings. EJ Holmes summarised the particulars of claim accurately at the case management preliminary hearing of 20 December as: “*an eight and a half page document written in the first person, which is highly narrative. It does not identify what type of discrimination is alleged against which party, or the relevant dates thereof.*” Further particulars were ordered by EJ Holmes and provided by the claimant on 7 January 2019. As best as the Tribunal identify from those particulars (page 190-191 Bundle 3), it appeared that the following was alleged against Dr Hanley:

    (1) Dr Hanley labelled and profiled the claimant as a trainee doctor in difficulty and “*took pleasure in informing her colleagues that this was the claimant’s title*”.

    (2) “*Dr Hanley’s subsequent interactions with Dr Peter Gibson…is the link to why the claimants final the ARCP outcome 30 October 2017 and the appeal against negative outcome was unsuccessful.*”

    (3) Dr Hanley did not “*recuse herself from any decision-making process*” and was responsible for “*malicious rumour spreading*.”

    (4) Dr Hanley wrote an email to Tina Davies calling the claimant “*a doctor in difficulty behind her back*” and did not notify the claimant of this assessment.

23. In respect of these four points, points (1) and (4) seemed to cover essentially the same point, that the claimant was described as a “doctor in difficulty”; point (2) was still not properly explained or particularised; and the recusal and alleged rumour spreading at point (3) were substantially the same allegations which were the subject of the application to amend the original proceedings and were dismissed by EJ Slater and EJ Franey, in other words that she did not recuse herself from the interview panel when the claimant was interviewed for a consultant position and she talked to Dr Gibson about the 9 May 2017 report and “spread rumours” about the claimant. The claims were substantially out of time (in the claimant’s further particulars she confirmed that the claims relied upon against Dr Hanley took place between 12 June and 19 October 2017) and there was no clear explanation as to why any of these points were said to be motivated by the claimant’s race.

24. The Tribunal took some time at the Hearing to seek an explanation as to why these proceedings were brought, both when questioning the claimant and when her representative was providing his submissions. The claimant was upset and, at times, agitated and it was clear she genuinely believed that she had been adversely treated. These proceedings had dragged on for over two years and this was, in effect, the first opportunity for her to take the witness stand. As a consequence, her evidence kept straying towards the events which had led her to bring the claim. The claimant's representative's submissions also focussed upon the substantive merits of the claims. The claimant's principal submission of relevance to the costs application was that the claimant had discovered some new facts from documentation disclosed in June 2019 as a consequence of a Subject Access Request, and it was this which led to her issuing these proceedings against the respondent. The Tribunal sought specifics as to what this documentation was and what information it contained such that it was said to lead to these proceedings.

25. There was said to be a "*florid of emails between Dr Peter Gibson and Dr Marie Hanley discussing about the claimant's business behind her back.*" After some efforts the key document upon which the claimant relied was identified as the email from Dr Hanley to Dr Gibson of 18 October 2017 (page 100 of the third bundle). The comment of Dr Hanley in this email was, "*I would like to thank you for supervising [the claimant] in this placement and for providing her with constructive feedback. You have clearly demonstrated that you have spent a lot of time supporting her.*" This was said to be a reference to a report headed "*feedback on Dayo*" prepared by Dr Gibson, and the part of the report to which the claimant particularly objected was that she was described in it as a "*liability*". The content of this report was relied upon in the original proceedings but it was said, in essence, that the comments of Dr Hanley in the email demonstrated that she had discriminated against the claimant.

26. The full context of the "*liability*" comment was that Dr Gibson was that he was quoting the views of other physicians rather than those of his own. He stated, "*when I tried to get some feedback from some of my other Acute Physician colleagues many of them would refuse to comment or state "she is a liability and should not be allowed to work as a consultant". When I tried to ask for specific feedback they would not quote specific examples but would say this is the "general consensus of many colleagues".*" The report also contained positive comments about the claimant and the conclusion appeared to be balanced: *"On the whole [the claimant] is polite and pleasant to work alongside I feel it would be unfair to me to be solely responsible for her sign off based on the two weeks I spent with her. Her display of knowledge seemed sufficient for the cases we saw and encountered in the two-week period but again this cannot be utilised as a "surrogate" sign off for acute medical competencies. I did not observe her doing any procedures so cannot comment on this. On the whole the juniors didn't "gel" well with her but nurses found her helpful. I realise*

she is not an Acute Medical trainee but she clearly thrives in the geriatric aspects of the cases we saw. However she will be participating in acute takes as a consultant so needs to find a balance between pace of the round, demands and pressure of AMU and being thorough". In that context, the Tribunal found that Dr Hanley's description of that report as "*constructive feedback*" was not an unreasonable one and it did not provide a basis upon which a discrimination claim could be founded.

27. The other issue relied upon was that the claimant was described as a "*doctor in difficulty*" by Dr Hanley, which it was said was only discovered by the claimant in June 2018 when she received documentation in relation to an internal appeal hearing. This was referred to at pages 31 to 36 of the second bundle, which comprised notes of an investigation meeting with Dr Hanley on 20 September 2017. At page 32, Dr Hanley is asked the question, "*Was he [Professor Martin Vernon] aware of the previous issues and that she was a trainee in difficulty?*" and she replies, *"Yes. I don't know how long she has been on the official doctors in difficulty plan…but Professor Vernon was aware that there had been issues relating to difficulty with interactions with colleagues."* The Tribunal were not of the view that Dr Hanley responding to questions about the claimant's status or concerns about her practice in the manner set out at pages 31 to 36 gave rise to any additional cause of action. Nor was it explained how these matters were said to be motivated by the claimant's race.

28. The Tribunal was not persuaded therefore by any evidence put before it, or by the claimant's submissions, that there were additional disclosures in June 2018 which gave any reasonable grounds for these proceedings to be issued against Dr Hanley. The claims were substantially out of time, based upon similar facts relied upon in the original proceedings, and two of the three discernible complaints were substantially the same claims which the claimant sought to pursue against Dr Hanley in February 2018 which were rejected by EJ Slater and EJ Franey.

29. One puzzling aspect of these proceedings was that there appeared to be little, if anything, to be gained from bringing a fresh claim against Dr Hanley. The claimant already had an ongoing claim against two respondents based upon substantially the same facts. EJ Slater pointed this out in her Order of 13 March 2018 when she stated, "*It does not appear that adding Dr Hanley as a further respondent will provide the claimant with any additional remedy that she could not obtain, if successful, against the existing respondents to that claim."*

30. The Tribunal took the view that this claim, in effect, an abuse of process. The strict legal points of estoppel and the rule in *Henderson v Henderson* were not pursued in submissions and we were not required to examine those principles in detail. However, the claimant was seeking to issue fresh proceedings against a respondent, which was substantively out of time, based upon facts cited in existing proceedings and to bring claims which had already been refused by

two previous Employment Tribunals. The Tribunal held, for those reasons, that the claimant acted unreasonably in bringing the proceedings against Dr Hanley and that they had no reasonable prospect of success. This does not reflect in anyway upon the merits of the original proceedings, upon which we were not required to take a view.

31. It does not necessarily follow from those findings that costs shall be awarded to the respondent. The Tribunal was reminded that costs are a discretionary power, and agreed with the claimant's submission that costs remain the exception in the employment tribunal such that a relatively high threshold must be met before costs are awarded. No application for wasted costs was made and the Tribunal had no insight in to the advice given to the claimant by her representative so did not know whether the claimant was intent on issuing these proceedings against or because of advice received. Irrespective of that point, the Tribunal took the view that the claimant should have been fully aware, at the latest by 20 December 2018, that there were grave difficulties with these proceedings since these were spelled out in well-structured arguments in the grounds of resistance of both response forms, and those arguments were judged to have merit by Employment Judge Holmes when he listed the matter for a preliminary hearing to determine whether the claim should be struck out.

32. The Tribunal held that it was from that date, at the latest, that the claimant should have withdrawn the claims and it was from that date that the costs threshold was met. There was much evidence as to the reasons for the withdrawal on the morning of the hearing of 14 January and whether the claimant had had an opportunity to consider the costs warning sent on Friday 11 January 2019 before preliminary hearing. In view of our findings, we were not required to make any determination upon that evidence, although the Tribunal's noted that the reasons given by the claimant for withdrawing the claim in her letter of 14 January 2019 must have applied more or less equally by 20 December 2018.

33. There was evidence given as to the state of the claimant's health, which it was suggested was a reason for the timing of the claim against Dr Hanley. The Tribunal accepted the claimant's oral evidence that the events which led to the claim and the subsequent protracted proceedings had an adverse impact upon her health, and we were referred to a psychiatric assessment from June 2018 (pages 122-126 of the second bundle) in which it was confirmed that the claimant suffered from features of "*a depressive disorder which appear to be entirely related to work-related stress*". This did not explain why the claimant chose to issue these proceedings against this respondent and provided little, if anything, by way of mitigation in respect of the cost's application.

34. In respect of the costs incurred by the respondent, these were set out in some detail at pages 27 to 31 of the fourth bundle. These figures were not challenged by the claimant's representative. In general, the Tribunal were of the view that

the amount of costs incurred was not unreasonable, and the hourly rate of the qualified solicitors of £130 was accepted. The Tribunal had some difficulty identifying the date from which the respondent incurred costs following the preliminary hearing of 20 December 2018 since the schedule of costs did not provide any dates. It appeared however that item 10 related to that preliminary hearing and so the Tribunal allowed for the claimant to recover her costs from item 11 of the schedule onwards. The solicitor's costs incurred thereafter amounted to £3900. A couple of items appeared to be disproportionate, for example "*costs application*" amounted to 5.4 hours of work, which seemed excessive given that Counsel was instructed to deal with the cost application at the hearing. The Tribunal took a broad-brush approach and allowed 80% of the solicitor costs from item 11 of the schedule onwards, which amounted to £3120. The Tribunal allowed for Counsel's fees in their entirety at £2000. The total sum of costs allowable up to end February 2019 was therefore £5120. Further costs were incurred after 1 March in relation to the costs proceedings and the Tribunal also allowed 80% of the solicitor fees in that regard, which amounted to £728, and the entirety of Counsel's fees of £1000. The total sum therefore came to £6848. These figures are exclusive of VAT and the Tribunal assumes that Dr Hanley is personally liable for paying VAT on her legal fees. The VAT element is therefore £1369.60 and the total sum is £8217.60.

35. The Tribunal may, pursuant to Rule 84, have regard to the claimant's ability to pay. There was a detailed breakdown of her income and expenditure provided at pages 6-7 of the fourth bundle. This showed a monthly income of £3550 against expenditure of £5529. The expenditure included, along with mortgage repayments and household expenditure, various items relating to the claimant's children such as tuition fees; £650 for the claimant's own tuition each month; and other incidentals including "*Hairdos*" and "*Manicure/Pedicure*" which were said to amount to £150. The claimant gave oral evidence as to her means and confirmed that, in addition to her monthly net income of £3550, the father of her children made a contribution of about £1000 to the household income by way of child support. The claimant had a savings account which contained about £2000, albeit some of that was earmarked for training fees. She owned her own property for which she paid £245,000 in 2010, and the mortgage statement for that property showed that there was an outstanding mortgage of £99,788, which suggested there was a substantial amount of equity in it. Having taken account of those matters, the Tribunal was satisfied that the claimant had the ability to make payment of the costs assessed. Whether she was in a position to do so immediately was another issue, and one which might be the subject of some arrangement between the claimant and the respondent, but that was not a matter for the Tribunal.

36. The claimant is therefore ordered to pay the respondent's costs in the sum of £8217.

Employment Judge Humble

16th November 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

5 December 2019

FOR THE SECRETARY OF THE TRIBUNALS