EMPLOYMENT TRIBUNALS

Claimant: **Mrs S Mansfield**

Respondent: **Adrian Bressington t/a AB Family Law**

Heard at: **Bristol** **On: 9,10 and 11 March 2020**

Before: **Employment Judge R Harper MBE**
Members Mr H Adam
Mr N A Knight

Representation
Claimant: **Miss A Johns, Counsel**
Respondent: **Mr D Leach, Counsel**

JUDGMENT

The unanimous decision is that,

1. The claim of disability discrimination is dismissed.
2. The claim of breach of contract is dismissed.
3. The claim for wages is dismissed.
4. The claim for holiday pay will stand dismissed without further order in 28 days time as the parties have reached an agreement in principle for 2.5 days holiday pay at £151.83 net to be paid to the claimant.
5. The claimant do pay to the respondent the sum of £7,700 as a contribution to the Counsel's fees incurred

REASONS

1. This was a claim involving section 15 of the Equality Act 2010 namely discrimination arising from disability and sections 20 and 21, namely reasonable adjustments. We have had regard to the burden of proof provision in the Equality Act section 136.

2. The claim also involved a claim of holiday pay under the Working Time Regulations; a claim for the balance of notice pay under the Extension of Jurisdiction (Employment Tribunals) England and Wales Regulations 1994; and a claim for overtime and back pay.

3. In dealing with this case we have considered the following cases.

    - Igen v Wong
    - Madarassy v Nomura International
    - PP v Trustees of Leicester Grammar School [2014] UKUT 520
    - Toy v Chief Constable of Leicestershire Constabulary UKEAT/124/17/LA
    - Griffiths v Secretary of State for Work and Pensions [2017] ICR 160
    - Tarbuck v Sainsburys Supermarkets Ltd [2006] IRLR 664
    - Homer v Chief Constable of West Yorkshire Police [2012] IRLR 601
    - Way v Crouch [2005] ICR 1362
    - First Great Western v Waiyego UKEAT 0056/18/RN
    - Vision Events (UK) Limited v Patterson UKEATS/0015/13/BI

4. There has been one case management hearing in relation to this case by Employment Judge Wright on 18 April 2019.

5. In relation to her disability claim the claimant relies on dyslexia and, although not initially conceded, it is now conceded that the claimant was disabled with dyslexia at relevant times.

6. The Tribunal heard evidence on oath or affirmation from the following.

    - Mrs S L Mansfield
    - Ms A J Price
    - Mrs. Williams
    - Mr A N Bressington

7. The Tribunal has considered all the documentation to which our attention has been drawn but we make the point that if our attention has not been drawn to a particular document, then we have not considered it. We have considered all the written and oral evidence of the witnesses. We have considered the oral submissions of both parties and also the closing written submissions of the respondent.

8. I would like to record our thanks to both Counsel for the professional, and helpful, way in which they have both conducted their respective cases.

9. The claimant stated in paragraph 5 of the rider to the ET1 that she found parts of her role involving punctuation, grammar and proof reading more

challenging. The reason for highlighting those issues at this stage of our reasons is that this is an important aspect of the claim that has been made. The claimant did not disclose that she found other aspects of the role difficult.

10. On page 15 of the bundle, which is part of her ET1 claim, the claimant sets out the reasonable adjustments that she said should have been made,

    (1) Alternation or reallocation of her responsibilities (in particular to excuse her from having to proof read her own work).

    (2) Provision of digital record to record instructions.

    (3) Provision of dictation software big hand dragon dictate or other software.

    (4) Provision of Grammarly software recommended for typists and dyslexics alike.

    (5) Provision of Adobe Acrobat Professional which allows machine voice proof reading.

    (6) Provision of an electric scan pen which reads text as it is scanned.

11. The claimant was employed by the respondent between 23 October 2017, until 23 August 2018. The ET1 was filed on 29 November 2018. The ACAS A date was 8 October 2018. The ACAS B date was 18 October 2018.

Assessment of the Witnesses

The claimant

12. The claimant's CV is to be found on pages C1 through to C3. It is clear that she has impressive qualifications in bookkeeping, word processing and audio typing. She has completed a course as a Microsoft Certified Professional in 1993, a further course in 1993 Microsoft Systems Engineer. In 1993 she has a qualification for Microsoft Office User Specialist.

13. It is clear from the CV therefore that she was an experienced with her word processing. On page 2 of her CV it states that she chaired meetings, took minutes and distributed them, and followed up personal and assigned actions in a timely manner.

14. Of some significance in this case, also on page 2 of her CV, she records as acting as a McKenzie Friend in legal proceedings and acknowledged in fact that she had some expertise and knowledge of employment law and employment procedures. At the bottom of page 2 her CV records that:

> *"my work experience has been of a support and interactive nature requiring skilful communication, good record keeping as well as a strong clerical financial and keyboard skills"*.

15. Notwithstanding the claimant's submissions in her CV, and notwithstanding the fact that her statement was probably drafted by her solicitors, nonetheless the statement filed in these proceedings, with the caption at the end that it

was true to the best of her knowledge, contained a number of errors. In paragraph 1 it referred to the whole case being about an unfair dismissal claim when it is not, it is a disability discrimination claim. This is not just a typo; it is fundamental. Although this was corrected, the way in which the claimant gave her oral evidence felt very much as though she is still believed that she was pursuing an unfair dismissal claim.

16. In paragraphs 17 of the statement, there was reference to the wrong date, probably not much terms on that but it was slap dash.

17. In paragraph 26 there was a statement of the claimant, *"my net pay had increased into the bank"*. When this was unpicked, it was discovered that what the claimant meant was that all the receipts into the joint account that she has with her husband increased. That reflected various sources of income not just income from the respondent. In fact, it was very apparent that, as far as her income from the respondent is concerned, her net pay actually decreased between April and August 2018 because of a different tax code being applied, see pages 107 – 109. We found that the bald assertion in her statement was intended to be, and was, very misleading.

18. Also in paragraph 50 of her statement was a simply untrue assertion that *"during my employment I regularly worked and was paid for overtime"*. She did not regularly work overtime and was never paid any overtime. None of the employees of the respondent were paid overtime.

19. Those errors go someway to undermine, in our judgment the claimant's credibility. For reasons which will become apparent later in these reasons we also do not accept that it was appropriate for the claimant to seek Mr Bressington's password, and Mrs Williams' password, from the software provider. In passing, the Tribunal is rather surprised that that provider was prepared to send them to her. We were not impressed with the claimant's explanation about going into Mr Bressington's laptop. Although she had authority to use his laptop to look at emails we accept the evidence of one of the other respondent's witnesses that looking at emails would take about fifteen minutes, yet she was often observed spending a long time at his laptop.

20. There was most curious evidence about the claimant moving documents to different dormant client files and then deleting them. This was clearly trying to cover up errors which had been made in documents. The witness Abi Price said that if she did not have a function on her computer there must have been a good reason for it because she also did not have access to certain areas of Mr Bressington's laptop. Ms Price said *"it seemed a bit shady to me"*. Frankly, it seems a bit shady to us too.

21. Mr Leach is right, in our view, to observe in paragraph 6 of his submissions, that this is, of course, not an unfair dismissal claim. The test is one of objective justification and therefore conduct discovered post dismissal IS relevant in assessing whether the dismissal was appropriate and reasonably necessary. It is also a tool whereby we can assess the claimant's credibility.

22. One area which has caused the Tribunal very considerable concern about the claimant's credibility relates to an old lady who has been referred to as

Ms X. The respondent was instructed by Ms X to attend the retirement village where Ms X lives with a view to Ms X asking Mr Bressington to prepare a Power of Attorney and re - do her Will.

23. The claimant attended on one occasion with Mr. Bressington. She had never met Ms X before and therefore had no prior involvement with Ms X at all until introduced to Ms X by her employer. The Power of Attorney and the Will were drafted and when Ms X was asked to sign, she signed the will but felt that she was not able to do the Power of Attorney on the same day.

24. Very shortly after this the claimant was asked by Mr Bressington if the claimant could go and see Ms X to get the Power of Attorney witnessed. This visit by the claimant to Ms X ended up with the claimant befriending Ms X and the Tribunal was told by the claimant that Ms X is now very much a family friend and regarded as part of the family.

25. A letter was subsequently received indicating that Ms X wanted the claimant added as an Attorney under the Lasting Power of Attorney. It cannot be done in that way. The whole document has to be redrafted and a quote for £400 was made. This in itself was a very strange development bearing in mind that Ms X had only very recently met the claimant. Of itself it is suspicious. The claimant also indicated that a car had been purchased now which can take Ms X's wheelchair.

26. The Tribunal listened, with mounting incredulity, at how the claimant was prepared, perfectly freely, to admit how events subsequently unfolded without apparently appreciating the seriousness of the situation and how the situation appears to outsiders. What has subsequently happened is that a new Lasting Power of Attorney has been drawn up with the claimant as attorney – she can control Ms. X's finances and a new Will has been also been drawn up. The three beneficiaries under the Will are now the claimant, the church which the claimant attends, and also the retirement village where Ms.X lives.

27. This of course, meant that Mr Bressington has been deprived of the fees for re-doing the Lasting Power of Attorney and he has also been deprived of the fees for undertaking the administration of the estate when Ms X dies. There did not seem to be any recognition at all by the claimant that she had done anything wrong. Perhaps her view was that she was helping out a lady who had become a family friend. Mr Bressington, despite the fact that he gave his evidence in a very moderate way, was clearly angry in the way in which he gave his evidence on this point. Very understandably he said that had he known about this at the time, and had the claimant been working for him at the time, he would have had no hesitation to dismiss the claimant for breach of mutual trust and confidence.

28. It is in our view, a complete red herring that the claimant's grandmother and aunt may have instructed Mr Bressington to do some legal work which produced fees for the respondent. This does not, in any way, counter balance the Ms X issue.

29. We are very critical of the claimant's behaviour in relation to the Ms X incident and in our view it seriously undermines her credibility and whether we believed her evidence.

30. There were a number of issues regarding the performance of the claimant's work. The documents in the bundle, which represent about one week's generation of documents, show a number of documents with spelling and/or punctuation problems and/or words missing. There was an incident where the claimant mixed up the names of two brothers who were involved in an inheritance dispute. We do not accept the claimant's evidence that this confusion was as a result of Mr Bressington's direction. We accept that she profusely apologised to Mr Bressington for having done it. She would not have apologised if it had been his fault. She never put in her witness statement that the reason for the error was down to Mr Bressington. This is something that came out later. We find that it is a manufactured excuse. Another error was that she placed a MIAM certificate on the wrong file. This is an important document and the mistake could have had important consequences.

31. She wrongly entered a MIAM certificate on another file stating it was a C100 Children Act application form. This is inexcusable, particularly bearing in mind that she had typed a number of C100 application forms which we were told run to twenty pages, and would have been very familiar with what they looked like which is very different to what a MIAM certificate looks like.

32. On another occasion a court date was missed and a £5,000 wasted costs order was made against the respondent.

33. On another occasion early one morning she was asked to send a document out and told that it absolutely must go out on that particular day. When Mr Bressington checked in the late morning whether the document had been done he was told that the claimant had not even started it and was upstairs doing some archiving. This document ended up being typed by Mrs Williams.

Mr Bressington

34. We found Mr Bressington to be completely straightforward and we were impressed with his clear desire to do everything correctly, professionally, and with a degree of compassion and understanding towards his staff.

35. The Tribunal considered the document at C35 as an example of that. This is a note from Mrs Williams as there had clearly been discussions about whether the claimant should be dismissed. Mr Williams records that Mr Bressington saying as follows:

> *"He felt I might not understand but he could not countenance terminating the employment of a member of his church when she made it clear that she enjoyed her job and wanted to stay. However, he confirmed that he could not justify taking her off probation"*.

36. This gives a very telling window of insight into the impressive way in which Mr Bressington ran his practice. We observe that had this been a claim of unfair dismissal, which it is not, it may have had a small chance of success in relation to the procedures adopted. The giving of a warning for dismissing somebody without convening the necessary meetings, or dismissing the employee without prior notice, left much to be desired. The dismissal of the

claimant was done without any form of meeting or consultation. In that respect the Tribunal are critical of the respondent but that is not relevant for the allegations that we have to deal with. The Tribunal hopes that employment law lessons will be learnt by the respondent in the future. This is not an unfair dismissal case and the Tribunal does not have to consider the case from an analysis of compliance with dismissal procedures.

37. We find that Mr Bressington genuinely believed that the many serious failings of the claimant regarding punctuation, spelling etc were down to a poor education. We find that the claimant was perfectly open in stating that she had had a poor education due to frequent moves when she was growing up; she had also been home schooled for a while. This poor education point was also the belief of Abi Price in her evidence. Mr Bressington genuinely had not understood any exchangeability in the terms "word blindness" with the term "dyslexia".

Abi Price

38. We were very impressed with this witness who was keen to tell us that she had a good working relationship with the claimant. There was no ill will towards her whatsoever. She had clear, and understandable concerns, about the claimant's behaviour regarding moving documents to defunct client accounts and in relation to the time which the claimant spent on Mr Bressington's computer.

39. As earlier highlighted, she made the telling observation, which we accept, that if a level of function was denied to an employee, it was for a good reason and this gave her suspicions as to what the claimant was doing. She observed that the claimant did a lot of shredding whereas she herself would let her own documents to be shredded build up for a period of two or three days before doing it.

40. We accept her evidence that the claimant was not escorted off the premises by Mrs Williams.

Mrs Williams

41. With a background of having an IT diploma, this witness was also impressive and helpful. She described, and we accept, how the claimant took issue with technical support and the claimant spent an inordinate amount of time complaining to the provider as to what the systems should be capable of when it was clear that any slowness in the system was down to broadband speed and not Select Legal. There is a broadband speed analysis document in the bundle. Mrs Williams made it clear that it was not the claimant's role to get the computer system up and running, or to order stationary. In relation to the written warning that the claimant received about time keeping Mrs Williams said, and we accept, that the claimant had not sought prior approval for the absence which could have caused considerable inconvenience for the respondent.

42. Mrs Williams gave evidence, which we accept, that the tipping point in deciding whether to dismiss the claimant was the second MIAM certificate issue which was only a few days after the first MIAM issue.

Background

43. The claimant was employed to deal with telephone calls, do archiving, do typing for Mr Bressington. She was employed on a probationary period at a particular salary. One of the criticisms that she makes is that the software provided didn't allow for documents to be read out. We are satisfied having received oral evidence, and seen the documentation in the bundle, that in fact the software had a provision for documents to be read out.

44. Mr Bressington who was a busy sole practitioner running a small firm used Big Hand digital dictation on his phone. There was Big Hand software on the claimant's computer. The claimant makes criticism in the lack of provision of reasonable adjustments to the respondent not having software on the computer called Grammarly. In fact, Mrs Williams gave evidence that, after the claimant's departure, she examined the claimant's computer and discovered that the claimant had frequently accessed Grammarly but notwithstanding that, still lots of mistakes were made. So, Grammarly was not downloaded on the computer but the claimant had access to it and used it extensively.

45. The claimant gave evidence that prior to joining the respondent she had produced good work for some time and she says that there was no reason for Mr Bressington to think that she was dyslexic. This is an important concession in her evidence on the issue of the respondent's knowledge of her dyslexia. Even the claimant says that she was shocked to learn how bad her grammar was.

46. There was a discussion between the claimant and Mr. Bressington in February 2018. On her evidence the claimant had turned up to that meeting with a resignation letter. The Tribunal find it is inconceivable, with all the mistakes that had been made, and the dissatisfaction that the respondent felt with the claimant's performance, that the respondent would have ever considered at that meeting, making the position permanent or agreeing to increase the salary or agreeing to increase the length of notice.

47. The probationary period was in fact extended; the claimant was never made permanent; the period of notice remained at one week.

48. The respondent firm is very small and run from the home of Mr Bressington who was the sole principal. The long serving Practice Manager, Mrs Williams and Mr Bressington, were the only persons who had access to certain parts of the business. Although the claimant had access to Mr Bressington's laptop, this was not a grant of total permission to look at everything which was on it. The claimant managed to obtain Mr Bressington's password and Mrs Williams' password to access areas that she should not have gone into.

49. Towards the end of paragraph 13 of Mr Bressington's statement he states as follows.

> *"I gained the impression that Mrs Mansfield thought that she actually ran the business herself rather than concentrating on the role that she was employed to do namely that of the Secretary with the main*

responsibility of the day-to-day production of items which needed to be typed".

The Tribunal had the benefit of hearing substantial evidence in this case and we agree with that conclusion; we think it is a reasonable conclusion to reach. This conclusion probably stems, not from anything sinister, but from the fact that the claimant had previously held senior management roles and had an impressive CV and she found it difficult performing a subordinate position.

50. Mrs Williams said that the claimant had involved herself in ordering stationery when she should not have done so. She got involved in talking to the software supplier when she should not have done so. She obtained two passwords which she should not have done so. Mrs Williams described in oral evidence that the claimant was interfering and that she knew the respondent had procedures in place. Mrs Williams said that some items of stationery were purchased by the claimant who thought that she could get the items cheaper, but Mrs. Williams described them as not being of the right quality. Mrs Williams said that she mentioned all these to the claimant and *"we would have liked to have seen a significant improvement"*. That improvement did not materialise.

The Law and applying the Facts to the Law and vice versa

51. The legal issues in this case were recorded in the case management order dated 18 April 2019.

Knowledge

52. Despite approving the ET1, which had been prepared by reputable solicitors, this contained no reference to the claimant's assertion that she now makes that, in December 2017, she told Mr Bressington that she was dyslexic. We prefer Mr Bressington's evidence on that that she did not say that. We found him to be entirely truthful in his evidence.

53. The first time that the claimant raised the possibility that she might be dyslexic was in her letter of 19 August 2018 which appealed the respondent's letter issuing her with a warning with regard to timekeeping. There had been reference by Mr Bressington on one occasion to the expression "word blindness" although, as earlier set out, he had not made the connection between that and dyslexia. Maybe he could have done, but he did not. The claimant did not tell Mr Bressington that she had done an online diagnostic test for dyslexia some time in May 2018.

54. As Mr Leach submits in his skeleton argument, there are separate tests for knowledge of disability for each cause of action. In a reasonable adjustment claim, the issue under schedule 8, paragraph 20 subsection (1) is whether the employer does not know, or could not reasonably be expected to know, that an interested disabled person has a disability and is likely to be put at the relevant substantial disadvantage.

55. In a section 15 claim the issue is simply whether the employer did not know or could not reasonably be expected to know, that the employee had the disability.

56. The Tribunal has carefully considered the case of Toy v Chief Constable of Leicestershire Constabulary, and in fact have read the whole Judgment of that case, and we agree with Mr Leach that there is much in common in that authority with the facts in this particular case.

57. As Mr Leach records, in paragraph 18 of his written submission, the most important factor for the EAT, and the Toy case, was that there was only a strong belief by the claimant at the time of dismissal that she was dyslexic. It was a mere assertion, unsupported by evidence. A very strong parallel to the case that to the case that we are dealing with now. It is also the case that there is no medical evidence that the errors, of which there were many, were in fact related to dyslexia. The claimant, despite being represented by reputable solicitors, and despite with them going through a case management preliminary hearing, had not sought an order for the provision of medical evidence in relation to that point and no such evidence appears in the court bundle. No criticism attaches at all to Miss Johns who presented the claimant's case very well at the hearing.

58. It follows, therefore, that our primary finding in relation to the disability claims are that they do not succeed because we are not satisfied that the respondent had knowledge of the claimant's disability at the relevant time.

59. However, we have gone on, in the alternative, to consider the two claims.

60. The case management order in relation to the section 15 claim regrettably, is not as clear as it could have been, but it seems to be the case that the unfavourable treatment relied on was the claimant's dismissal.

61. In the earlier paragraphs in these reasons, the various areas of concern were set out, for example, unreliable telephone messages, not following instructions, sending an email to the wrong party and so on.

62. The dismissal, we find was not because of something arising in consequence of disability. It was because of all those matters set out above as well as the spelling, grammar and punctuation issues and as earlier set out the tipping point was the second MIAM certificate.

63. As Mr Leach sets out in paragraph 28 of his submissions, "in the light of the dyslexia report and the claimant's average or slightly above average scores for reading, writing and spelling, it is impossible to know whether the errors the claimant apparently accepts she made, arose in consequence of disability or because of her educational background as she herself suggested or because she did not concentrate or apply herself properly. Causation cannot simply be assumed." It is for the claimant to pass the initial burden of proof; she has not done so. If we had to go on to consider matters we would agree with Mr Leach's observations that objective justification is clearly made out for the reasons set out in his document.

64. With regard to the claim of reasonable adjustments, the PCP is set out in paragraph 17 of the rider to the ET1 and this is found at page 14 of the bundle and it is set out as follows

"The relevant PCP being the requirement to fulfil the ordinary duties of a legal secretary".

The respondent failed to comply with this duty in order to remove the substantial disadvantage which she was under".

65. The ET1 goes on to set out the six matters of reasonable adjustments that are set out in paragraph 10 above. We find that the pleaded PCP did not put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled. We have regard there to section 20(3) of the Equality Act 2010. She only alleges that parts of her role were more challenging relating to punctuation, grammar or proof reading. We find that paragraph 17 of the rider to the ET1 is poorly drafted and does not make clear the nature of the substantial disadvantage relied upon. It is not for us to imply what was meant, or construct a case for the legally represented claimant. We deal with the pleaded case with which we are presented.

66. We turn then to an analysis of the reasonable adjustments set out on page 15 in paragraph 17 of the ET1. We find that this was a small firm, a one man band, so there was no scope for alternation or reallocation of responsibilities. In any event, on occasions others ended up doing the claimant's typing. Abi Price in particular on occasions used to proof read some of the claimant's work.

67. We accept that Microsoft Word provides a text to speech function and, as Mr Leach submits, sometimes reasonable adjustments can be made unwittingly - Tarbuck v Sainsbury's Supermarkets Ltd. In relation to Grammarly, although this was not downloaded as such onto the computer, it was in fact accessed regularly by the claimant but still did not prevent the claimant making numerous mistakes. Big Hand dictation was used. Dragon Dictate would not have assisted. If Dragon Dictate had been used then that would obviate the need for a personal assistant in the first place.

68. As we find that there was a read out loud facility on the software that already existed, then having a scan pen, with a read out function, would have not further assisted at all.

69. For all the reasons set out above, we find that the disability claims do not succeed and they are dismissed.

70. We turn now to the money claims. As the case progressed, the parties reached an agreement with regard to holiday pay and it was agreed that that claim would be dismissed subsequently upon withdrawal upon the parties reaching that agreement on a figure has now been reached in the sum of £151.83 net.

71. We turn to the claim for notice pay. There was never an agreement to extend the notice pay to one month from one week and indeed the document at B3 is quite telling in this regard because this is a letter drafted by the claimant dated 5 February 2018 which records as follows:

"I understand a week's notice is due".

72. Nothing changed, one week's notice was paid, nothing more is owed. The breach of contract claim is dismissed.

73. The claim for the difference between the salary that a probationer was on, and the salary that would have been paid if the employment had been confirmed, goes nowhere because the employment was never confirmed. The probationary period never finished and therefore she was paid correctly at the probationary rate.

74. In relation to overtime, we accept Mr Bressington's evidence that no staff were paid overtime. There is no contractual entitlement to it, and neither can it be said to be an implied term due to custom and practice. The evidence was, as Mrs Williams said, a give and take environment. Sometimes the claimant was allowed to leave early for church meetings, but that meant the time had to be made up elsewhere. That did not justify a claim for overtime. Mr Bressington did say that if a staff member came in on a Saturday then he would consider paying extra. "Considering paying extra" does not amount to an agreement to pay, or a legal obligation to pay. In any event the respondent was doubtful that the claimant had worked the Saturday claimed. Therefore, the overtime claim also fails.

75. In conclusion, except with regard to the holiday pay claim which is being conceded and dealt with as above all the claims fail.

Costs Application

1. Subsequent to announcing our decision on liability we were addressed by the respondent in relation to the application for costs under Rule 76. The application was in relation to the case being unreasonably brought or unreasonably continued.

2. This is a case where, on 3 March 2020, a without prejudice letter was written to the claimant's solicitors. Rather oddly the claimant's solicitors did not actually reply at all. It was only when Mr Bressington telephoned them that he discovered that the offer of £10,000 which he had made was not accepted; there was no counter offer. He made it clear in the letter that the offer would remain open till 4.00pm on 4 March and that Counsel's fee would be incurred at 5.00pm on that day.

3. The offer of £10,000 was against the claimant's original proposal of £25,000. The offer of £10,000 was, in our view, more than simply just a commercial offer: it was a substantive offer to make and the claimant turned it down. We are told that the claimant felt very strongly that she should continue with her claim because she felt very strongly as a point of principle. Sometimes, pursuing principles costs.

4. The respondents cited the following cases to us which we have considered:

   Peat v Birmingham City Council UKEAT 0503 11CEA

   Paris Smith v Nottingham Trent University [2012] ICR 159

   Barnsley Metropolitan Borough Council v Yerrakalva [2012] IRLR 78

Orally, Mr Leach referred to the case of Vaughn v London Borough Council of Lewisham [2013] IRLR 713

5. That latter case was in relation to the fact that no request had been made for a deposit order. Mr Leach correctly made the submission that the failure to require a deposit order is not necessarily damaging to a cost application being made.

6. The without prejudice letter written last week to the claimant was entirely fair. It made the position very clear. The Tribunal has roundly found against the claimant. The tribunal's findings echo some of the points made in the letter. We make a finding that the case was brought unreasonably and continued unreasonably especially after the date of the without prejudice letter.

7. We had been asked to consider making an award for two other separate Counsels' fees in relation to two different Counsel. We take the view that we have a wide discretion in making a costs order and we find that it is just and equitable to approach it in the way that we have, namely that Mr Leach's fees only should be reimbursed.

8. The rules require us to invite the person against whom a costs order is being considered to provide details of their financial position which has been done. An immediate inability to pay does not mean that we are necessarily bound to make an award tailored to that position.

9. We make an order for costs of £7,700 which represents Mr. Leach's net fees.

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Employment Judge R Harper MBE

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Date: 20th March 2020