EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr K Crossland	**v**	Chamberlains Security Cardiff Limited

Heard at: Bristol (by video) **On:** 20 April 2021

Before: Regional Employment Judge Pirani
Members:
Mr H Launder
Mr C Williams
Appearances
For the Claimant: in person
For the Respondent: Mr N Smith, counsel

REASONS

JUDGMENT having been sent to the parties on 20 April 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided (although the request for written reasons was received on 20 April 2021 it was not referred to the Judge until 15 June 2021):

Background and issues

1. These are the reasons for a Costs Judgement in which the decision was:
   - **i.** The respondent's application that the claimant pay costs is refused.
   - **ii.** The claimant's counter application for a preparation time order is refused and is out of time.

2. Because of the extensive history of this case, it may be useful to repeat what has already been set out in previous documents.

3. The substantive case was heard in the Bristol Employment Tribunal on 8, 9 and 10 May 2017 ("the Bristol Tribunal") before Employment Judge Pirani, with members Mr CD Harris and Mrs E Burlow. The Claimant succeeded in all three of his causes of action under his claims under sections 20 and 21 of the Equality Act 2010 in his claim of a failure to make reasonable adjustments; and in his complaint of breach of section 15 discrimination (because of something arising in consequence of his disability), and also in his section 27 victimisation complaint. However, on two acts of discrimination the Claimant did not succeed: (1) the Tribunal found that Respondent was entitled to remove the Claimant from his particular post and that this complaint did not constitute a failure to make a reasonable adjustment, and (2) the Tribunal found that the Claimant resigned and was not dismissed, and his complaint of discrimination in dismissal therefore failed.

4. The case was due to proceed to a remedy hearing but was delayed pending the claimant's appeal to the Employment Appeal Tribunal (EAT). Her Honour Judge Stacey, as she then was, dismissed the appeal by judgment dated 31 May 2018.

5. The claimant then made further appeals. On 13 August 2018 the Court of Appeal rejected his application on paper. A further appeal, based on allegations of fraud, was issued on 22 July 2019 which was later withdrawn and re-presented in the Cardiff County Court. This was then dismissed with costs on 2 October 2019. On 11 August 2020 Soole J, sitting in the EAT on a rule 3(10) hearing, dismissed an appeal against the refusal of REJ Pirani to recuse himself from any remedy hearing. Soole J agreed with the President of the EAT that the allegations of bias were wholly without merit. The same judgment agreed with a previous observation that the application amounted to a re-run of arguments on his unsuccessful appeal.

6. Eventually the matter came to a remedy hearing on 3 November 2020 at which the claimant was awarded £21,289.28 (including interest). A compensatory award for past lost earnings was awarded at £7,496.04 (six months net loss at £1,249.34 per month). From this was deducted monies awarded for loss of earnings by a previous Employment Tribunal in the sum of £8,529.13 (plus a 25% uplift). Therefore, the compensatory award was reduced to nil. Were the deductions not made, the award would have been in excess of £28,000, plus interest.

7. After it was explained to the claimant, at the commencement of the remedy hearing, that the tribunal would be considering remedy only, and therefore not determining the "fraud issue", the claimant sought to accept an open offer made at the substantive Bristol Tribunal hearing in May 2017. According to the claimant, the offer was extant and therefore capable of acceptance at the commencement of the remedy hearing. Subsequently, it transpired the claimant was only willing to accept the offer if he was permitted to continue to pursue different causes of action against the same respondent relating to the facts of this case. It then transpired that subsequent offers were made by the respondent, all phrased in terms of full and final settlement of all claims arising out of the claimant's employment with the respondent. After some discussion, and some delay to the remedy proceedings, the claimant withdrew his purported acceptance.

8. The matter was originally heard at the Cardiff Employment Tribunal in July 2015. The claimant subsequently successfully appealed, and the matter was remitted to the Bristol Employment Tribunal.

9. Importantly, in the context of this application, before the evidence commenced at the Bristol Tribunal in May 2017, the respondent made an open offer to the claimant of £27,000 without admission of liability.

Documents

10. In accordance with the directions both parties provided helpful written skeleton arguments. In addition, both parties submitted pages to a bundle which were consecutively paginated. The bundle ended at page 143.

11. An issue arose in relation to an email sent by the claimant to the respondent dated 30 May 2017. It is included in our bundle but headed "without prejudice reply". It does not state that it is without prejudice subject to costs. The email is in response to an open offer from the respondent. The claimant indicated that he did not wish to waive privilege in respect of this email or any other without prejudice correspondence. The respondent was unable to explain, in any satisfactory terms, why the email had been included in the bundle.

12. The tribunal decided to exclude the email from our deliberations. However, the claimant was not subject to any prejudice because, in his oral and written submissions, he broadly makes the same substantive points that are in the email.

Respondent's Costs application

13. The respondent made an oral application for costs at the remedy hearing. Directions were subsequently provided, and the matter was listed for consideration today. The remedy hearing was conducted in person, whereas this costs application was conducted by video.

14. The Respondent's application for costs is said to reflect the sums incurred since the liability hearing in these proceedings. According to the Respondent, they reflect the fact that ongoing costs have been unreasonably incurred in reaching the conclusion of these proceedings and dealing with matters arising as a consequence of the Claimant's unreasonable behaviour.

15. The Respondent explains that it is not seeking 'double recovery' of other costs incurred in, for example, the County Court. They are £19,230 being less than £20,000 and therefore do not require a detailed assessment.

16. The respondent applies for costs on the bases:

i. fundamentally on the ground that the Claimant has acted unreasonably in the conduct of proceedings since the conclusion of the liability hearing
ii. the Claimant has been in receipt of multiple offers to settle the matter, mostly in open correspondence.
iii. the Claimant's failure to secure more in compensation than he has been hitherto offered: where a party makes an offer to settle a case, which is refused by the other side, costs can be awarded if the tribunal considers that the party refusing the offer has thereby acted unreasonably (**Kopel v Safeway Stores plc [2003] IRLR 753, EAT**).
iv. the fact that the Claimant succeeded on liability does not change the position if his conduct thereafter was wholly unreasonable, in that the Claimant has maintained that the Respondent has acted fraudulently during the liability hearing. This is both perverse and vexatious. The Claimant's behaviour is not only unreasonable but vexatious and amounts to an abuse of the legal system amounting to harassment of the Respondent and its directors.
v. The Claimant's conduct of the matter since the trial has been unreasonable

17. The unreasonable/vexatious conduct is said to have been:

i. Refusal of an offer to settle
ii. The Claimant's failure to secure more in compensation than he has been hitherto offered
iii. The Claimant has relentlessly brought appeal proceedings and has become fixated on accusations of fraud by the Respondent in the conduct of the proceedings together with even more surprising allegations of bias/ impropriety on the part of the Tribunal.
iv. The Claimant has taken the matter to the Court of Appeal and has started all over again 3 in the ET and the Cardiff County Court with fresh proceedings alleging fraud in these proceedings.
v. His frankly bizarre, repeated, and misplaced focus on the fraud issue during the remedy hearing

18. The respondent says the significant financial cost since trial was avoidable and should, in normal circumstances, have been avoided, had the Claimant not acted

in his unrelentingly blinkered and perverse way. By definition, this is said to be unreasonable.

19. The respondent also notes that the claimant has been involved in other proceedings relating to this claim. The Claimant had previously brought virtually identical proceedings alleging fraud in the Cardiff ET, whereupon he decided to withdraw them, opting for similar proceedings in the County Court. This led to a strike-out with costs being awarded against him. On 9 December 2019 the Claimant was seeking to obtain an EC certificate from ACAS with a view to issuing further proceedings based on allegations against the Respondent of fraud although this claim has not yet been issued so far as the Respondent and its solicitors are aware.

20. The respondent says that strenuous efforts have been made to settle this claim at all stages of the process.

The Response to the application

21. The claimant says in response, among other things:

i. He is not a serial litigator. He has a right to use the legal system if his rights have been infringed.
ii. Every employment case he has brought he has won.
iii. The only case he did not win with a winning judgment was settled for £15,000 and a tacit admission that discrimination had occurred.
iv. The Respondent won in Cardiff Employment Tribunal after which he appealed. He won in Bristol. Then their next real engagement was in Cardiff County Court where he lost, and the Claimant paid their costs. Their next engagement was in the remedy hearing in November 2020. The claimant says they have been involved in a normal process of litigation.
v. The Claimant alone has suffered the cost of the appeals
vi. Paragraph 77 of the Bristol Judgment “shouts out fraud”.
vii. He was called “dishonest” in the Cardiff judgment, not once but, several times, and was entitled to clear his name. A Bristol judgment that negatived the Cardiff judgment was a “necessary component of that process”.
viii. The offer of settlement did not in any way address that he was not the dishonest party (or indeed that they were).
ix. He has paid the required £2,100.00 costs for the county court claim

22. The claimant also says, among other things:

i. Bristol Judgment Failed to Include an Alleged Risk Assessment Fraud
ii. Bristol did not Place The False Witness Into the Balance of Discredit
iii. Bristol did not Take Into Account R’s Dishonest Motivation for the Fraudulent Assessment and False Witness and Failure to Obtain Medical Evidence

23. He also again requests, in his written submissions, that “the Bristol Judgment be set-aside because of fraud”. The claimant goes on to explain “I believe that the proper administration of justice requires it. The parties can then continue the claim in Cardiff”.

24. However, in his oral submissions the claimant did not suggest that he wanted the remedy judgment set aside.

The Claimant's counter application

25. The claimant made an application for costs attached to his submission dated 15 March 2021.

26. The claimant says that "the respondent is acting in bad faith, maliciously, especially if they did commit fraud".

27. He says in his skeleton argument at paragraph 140 onwards:

> R is acting in bad faith, maliciously, especially if they did commit fraud. Regional Employment Judge Pirani said they did, directly to them. They will know they committed fraud both because they did, and because the judge told them they did. This application is the definition of unreasonable behaviour and of being vexatious and abuse of process. Indeed, R had no honest belief in the truth of this application for costs, which is the definition of acting with express malice and appears to be done to prove that they can get away with their frauds with impunity. It may also be a way of attempting to limit my ability to fight them through the courts and punish me for finding them out. Indeed, R has based its application upon the assertion that my allegations of their frauds are "*ludicrous*". That, it is submitted, should be an easy one to appeal, if needs be. The fraud is in the Bristol Judgment, staring out at us, waving, I'm over here, at para 77.

28. We should say, for the avoidance of doubt, it has never been said or suggested by the Bristol Employment Tribunal that the respondent committed "fraud"

Outline of Law

29. An Employment Tribunal has a discretionary power to make a costs order under rule 76(1)(a) of the Tribunal Rules 2013 where it considers that 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.

30. A party may apply for a costs order or preparation time order at any stage up to 28 days after the judgment finally disposing of the proceedings was sent to the parties: Rule 77. Of course, that time limit may be extended under the tribunal's general power.

31. There is no equivalent in the tribunal Rules to the general rule in the civil courts that the losing party will (subject to the discretion of the court) be ordered to pay the legal costs of the winner.

32. In **Barnsley Metropolitan Borough Council v Yerrakalva [2012]** the Court of Appeal, para 7, said that costs in the ET are the exception rather than the rule: "The [tribunal's] power to order costs is more sparingly exercised and is more circumscribed by the [tribunal] 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 [tribunal] costs orders are the exception rather than the rule."

33. This reflects the policy that tribunals should be accessible, and the assumption that many tribunal cases will be dealt with satisfactorily without the involvement on either side of lawyers.

34. According to Sedley LJ in **Scott v Commissioners of Inland Revenue [2004] IRLR** the "employment jurisdiction is, for sound policy reasons, ordinarily a cost-free jurisdiction, and for our part we should not want to see that principle compromised or eroded".

35. Rule 76(1) imposes a two-stage test: first, a tribunal must ask itself whether a party's conduct falls within rule 76(1)(a); if so, it *must* go on to ask itself whether it is appropriate to exercise its discretion in favour of awarding costs against that party.

36. 'Unreasonable' has its ordinary English meaning and is not to be interpreted as if it meant something similar to 'vexatious' - **Dyer v Secretary of State for Employment EAT 183/83**.

37. In determining whether to make an order under this ground, an employment tribunal should take into account the 'nature, gravity and effect' of a party's unreasonable conduct - **McPherson v BNP Paribas (London Branch) 2004 ICR 1398, CA**.

38. The EAT confirmed that costs should not automatically be awarded simply because a party has knowingly given false evidence. In **Kapoor v Governing Body of Barnhill Community High School EAT 0352/13** the Appeal Tribunal held that an employment tribunal erred when it stated that 'without more, to conduct a case by not telling the truth is to conduct a case unreasonably'

39. It is appropriate for a litigant in person to be judged less harshly in terms of his or her conduct than a litigant who is professionally represented: **AQ Ltd v Holden 2012 IRLR 648, EAT**.

40. We note that the claimant was legally represented at the substantive hearing before he dispensed with his counsel. The claimant also has some legal training although has not practiced.

41. **Kopel v Safeway Stores** held that failure to accept a Calderbank offer is only one factor that the ET can take into account when deciding to award costs. Where a party makes an offer to settle a case, which is refused by the other side, costs can be awarded if the tribunal considers that the party refusing the offer has thereby acted unreasonably.

42. In **Kopel**, Mitting J stated that the tribunal 'must first conclude that the conduct of an appellant in rejecting the offer was unreasonable before the rejection becomes a relevant factor in the exercise of its discretion under [r 76(1)(a) of the 2013 Rules]'.

43. In considering what weight if any should be given to this factor, it should be recalled that in many cases the sole issue is not money.

44. In **Anderson v Cheltenham & Gloucester plc UKEAT/0221/13** (5 December 2013, unreported) the EAT upheld a tribunal's award of £5,000 costs against the claimant where she had failed in her unfair dismissal and sex discrimination claims, and had not only turned down a 'generous' offer to settle the case but had persisted in alleging breaches of the provisions of the Human Rights Convention prohibiting torture and slavery, which the tribunal categorised as 'frankly ludicrous' and 'seriously misconceived'. In the circumstances, the EAT held that the tribunal

was entitled to find that the rejection of the offer was unreasonable conduct of the proceedings justifying the award of costs that was made.

45. A detailed costs regime in the EAT was introduced in October 2004, which amended the Employment Appeal Tribunal Rules 1993 SI 1993/2854 ('the EAT Rules') to bring them more in line with the costs regime in employment tribunals. In particular, the circumstances in which a costs order can be made by the EAT were widened, and additional powers were introduced enabling the EAT to award costs in favour of litigants in person and to make wasted costs orders against representatives. The relevant provisions are found in rules 34–34D of the EAT Rules. These are supplemented by para 21 of the 2018 Practice Direction.

46. The decision as to whether or not to award costs in a case where the conditions of rule 34A of the EAT Rules are met is a matter for the Appeal Tribunal's discretion. Under rule 34A(1) of the EAT Rules, a costs order may be made against a party to proceedings where it appears to the EAT that: the proceedings were unnecessary, improper or vexatious, the proceedings were misconceived and that there has been other unreasonable conduct in the bringing or conducting of proceedings.

47. If a case progresses beyond the EAT, costs will be dealt with under the Civil Procedure Rules 1998 SI 1998/3132 (CPR).

48. Similarly, if the claimant issues associated proceedings in the county court, they are subject to the costs regime in the county court.

Conclusions

49. As set out above, the Respondent's application for costs is said to reflect the sums incurred since the liability hearing in these proceedings. According to the Respondent they reflect the fact that ongoing costs have been unreasonably incurred in reaching the conclusion of these proceedings and dealing with matters arising as a consequence of the claimant's unreasonable behaviour.

50. The Respondent explains that it is not seeking 'double recovery' of other costs incurred in e.g., the County Court. They are £19,230 being less than £20,000 and therefore does not require a detailed assessment.

51. The schedule of costs is at pages 67 and 68 of the bundles. It includes attendance on documents relating to appeals, both in relation to the EAT and the Court of Appeal. In addition, the schedule shows attendance on documents relating to employment tribunal proceedings in Cardiff Employment Tribunal. It also includes counsel's fees, listed as disbursements, seemingly relating to days two and three of the May 2017 hearing in addition to those of the remedy hearing.

52. Counsel for the respondent helpfully clarified at the commencement of the hearing that, in fact, the only costs he seeks are those relating to remedy and those relating to this costs hearing. However, it was not explained why defending a costs application could said to be unreasonable or vexatious. In addition, the tribunal was not presented with a schedule carving out the actual costs claimed for.

53. Turning to the various parts of the respondent's application.

54. One of the central planks of the application is the claimant's refusal to accept an open offer of £27,000, without admission of liability, made on 8 May 2017 on the first day of the Bristol Tribunal. The offer was then repeated in an email to the

claimant on 30 May 2017. However, it was made on the basis of full and final settlement as well as the proviso that both parties agreed not to lodge any appeals against the decision of the Bristol Employment Tribunal or pursue any costs orders. On 21 June 2018, after the tribunal made initial directions for a remedy hearing, the offer was repeated in a further email to the claimant. Finally, after an attempt to accept the offer at the remedy hearing in November 2020, the respondent repeated its offer originally made in May 2017.

55. The respondent says that strenuous efforts were made to settle the claim "at all stages of the process". However, we were not told of any attempts to settle prior to or during the Cardiff Employment Tribunal or any stage prior to the first day of the liability hearing.

56. We do not find the refusal to accept the offer in May 2017, or after the liability judgment was promulgated, to be unreasonable. The claimant was concerned about various aspects of the liability judgment and wished to appeal. Accepting the offer would have precluded his ability to appeal. Previously claimant was forced to appeal a decision of the Cardiff Employment Tribunal in the same case which found against him.

57. In particular, the claimant was concerned that the Bristol Tribunal found against him when weighing up issues of credibility. This particularly concerned the claimant because he reasonably believed this went to issues relating to his honesty.

58. The claimant also believed that the judgment failed to set out all his arguments on credibility, or lack thereof, of the respondent. Although the claimant was largely successful, he did not succeed in relation to particular allegations relating to dismissal. Because of this he was unable to receive an ACAS uplift of up to 25% which would have increased any award due to him.

59. Ultimately, of course, his various and many appeals of the Bristol Tribunal were unsuccessful. Lord Justice Bean concluded that arguments on appeal that the Employment Tribunal should have found the respondent to be dishonest are hopeless.

60. Any unreasonable or vexatious conduct which transpired during the appeals to the tribunal claim, the application to the County Court or, indeed, further employment tribunal proceedings in Cardiff should be dealt with by applications for costs relating to those proceedings in those cases.

61. The respondent also points to the fact that even after the appeals appeared to have run their course and failed, the claimant still refused to accept the offer of £27,000.

62. Assessing the level of remedy in a case which involves multiple allegations of discrimination together with claims for past and future loss of earnings is not an easy thing to do. The claimant only failed to beat the offer because of deductions made to the remedy because of damages awarded by a different Employment Tribunal with an overlapping period of loss. But for this, the claimant would have beaten the offer.

63. This is a very different case to **Kopel**, for example, in which the claimant not only failed to beat the offer made but also did not succeed in the liability hearing.

64. Although the offer was remade at the commencement of the remedy hearing there was some dispute as to whether or not it was extant initially. In any event, the claimant turned it down because he wished to pursue further proceedings including, potentially appeal proceedings, against the respondent. By this time costs had already been incurred for the remedy hearing.

65. The respondent also says that the reason provided by the claimant for turning the offer down at the remedy hearing is itself unreasonable and vexatious. In particular, the claimant did not wish to accept any offer in full and final settlement. He wishes to pursue the respondent for what he alleges is dishonesty and fraud. That fraud is said primarily to relate to manipulated minutes of a grievance hearing which took place on 16 December 2014 and is referred to in the substantive judgment at paragraph 77 and again at paragraph 134. The tribunal found that there were exaggerations in the response form and also inaccurate meeting minutes kept by the respondent.

66. The claimant believed, and still believes, that an injustice has been done to him. He has made various attempts both in the appeal court and other tribunals and county courts to right what he perceives as this this wrong. Each of those courts and jurisdictions is able to award costs in certain circumstances. Indeed, the claimant has already paid costs in relation to the County Court.

67. Because of that belief the claimant elected to reject the offer and proceed to a remedy hearing at which damages were awarded. The tribunal does not doubt the genuineness of the claimant's conviction in this regard however mistaken and misconceived it may or may not be. For example, the claimant has pointed to a factual error in the brief reasons provided by the Court of Appeal in refusing permission to appeal.

68. Although costs could have been saved in relation to the remedy hearing by accepting an offer, we do not regard the refusal to accept as unreasonable. The offer was not unduly generous but a careful assessment of what the claimant would likely receive. In the event, the claimant received an amount not far off the offer. There was a significant dispute about loss of earnings. The claimant was entitled to take his chances in relation to this issue.

69. We also do not consider it unreasonable or vexatious for the claimant to defend an application of costs at a hearing.

70. Turning to the claimant's application for a preparation time order against the respondent. It was confirmed by the claimant that the first time the application was made was in his skeleton argument submitted in response to application against him. This was on 15 March 2021 and therefore out of time as, pursuant to rule 77 a party may apply for costs order or a preparation time order at any stage up to 28 days after the date on which the judgement finally determining the proceedings in respect of that party was sent to the parties.

71. Of course, the tribunal may extend time and conduct the hearing in the manner it considers fair, having regard to the principles contained in the overriding objective. The only explanation the claimant offered for the late submission of the application was that it was done in response to costs application made by the respondent.

72. The claimant has extensive experience of litigation in the Employment Tribunal. We do not consider that it would be just or fair to extend time to submit a costs application in this case. Although the claimant was given 1 ½ hours to present his

submissions he failed to elaborate or even repeat the initial explanation and did not say why it would be fair and just to extend time. In any event, the respondent has not succeeded in its application which is something we take into account when considering whether or not to extend time.

73. For the avoidance of doubt, had we allowed the application to proceed, we would have refused it.

74. Paragraph 77 of the substantive judgment provides:

> The claimant mentioned litigation and tribunal awards of injury to feelings of up to £30,000 (115). However, this was not, as the respondent originally suggested, "from the very outset of the meeting", but rather more than 30 minutes after the meeting started (see para 23 of ET3).

75. In essence, the claimant is concerned about what he describes as "fraudulent grievance notes".

76. The reference in the ET3 was wrong and misleading. The minutes were inaccurate. The respondent fought and lost the Employment Tribunal. That is as far as this tribunal found in relation to this issue.

77. It is also noteworthy that, as we have set out above, Lord Justice Bean found that arguments on appeal that the Employment Tribunal should have found the respondent to be dishonest are "hopeless".

78. The typed notes made by the respondent of the meeting with the claimant on 16 December 2014 run to 1½ pages spanning what respondent says was a meeting lasting just under 50 minutes. The third paragraph on the first page about halfway down makes reference to the £30,000. The notes go on to say that the claimant further stated that an award of up to £30,000 could be awarded for hurt feelings but more likely to be £7000-£8000.

79. The claimant covertly recorded the meeting and produced a transcript running to some 17 pages. The reference to the £30,000 is to be found on page 9 of 17. According to this transcript the claimant says: "okay, but also, there is an award for injury to feelings, and injury to feelings, or hurt feelings, can be, and this is in exceptional circumstances, £30,000. The average award I believe, is about seven or £8000, but, if a dismissal is part of the process, it could be up to, probably £10-£12,000".

80. No reference was made to this part of the meeting by Mr Trevivian in his statement to the tribunal at the substantive hearing. As the panel noted in the substantive judgment at paragraph 23 of the response form states: The meeting took place on 16 December 2015 (sic). The claimant claims that he was not listened to at the meeting. The reality is that from the very outset of the meeting the claimant who had not in advance detailed the nature of his grievance, stated that he could see the matter heading to tribunal and referred to awards of up to £30,000.

81. Even in his submissions today, the claimant was hard-pressed to explain how this could be "fraud "or something done with a view to commercial gain. We do not find the threshold test met.

82. In any event, even if the threshold test had been reached and we extended time for the application we would not have exercised our discretion to award costs or a preparation time order in favour of the claimant.

83. We take into account the fact that the respondent acted perfectly reasonably in making a sensible and carefully calibrated offer.

84. We also would have weighed in the balance the claimant's own conduct in relation to this particular issue. The panel in the Bristol Tribunal substantive hearing noted at paragraph 69 of the substantive judgment that despite the fact that the claimant was legally trained and had previously been involved in litigation he failed to disclose the recording of the meeting or the fact of recording until he exchanged his first witness statement for the purposes of these proceedings.

85. The panel also concluded at paragraph 70 that the claim form was drafted in a way which suggested that he had not recorded the meeting. Later, at paragraph 135, the tribunal concluded that the claimant must have known this was inappropriate conduct.

86. Accordingly, for the reasons we have provided the respondent does not succeed in its costs application. The claimant is out of time to present his costs application and we do not consider it fair or just to extend time. If time had been extended, we would have refused the claimant's application in any event.

Regional Employment Judge Pirani
Date: 21 June 2021

Reasons sent to the Parties: 29 June 2021

FOR THE TRIBUNAL OFFICE