



EMPLOYMENT TRIBUNALS

Claimant: Dr R J Heal

Respondent: University of Warwick and others (see annex A)

Date: 13 August 2021

Before: Employment Judge A James (sitting alone)

Sitting at: London Central

Appearances: Not applicable - decision made on the papers

JUDGMENT ON COSTS

- (1) The claimant is ordered to pay the following amounts of costs to the following respondents in the claims to which these costs proceedings relate (see Annex A):
- i. University of Warwick (claim A) - £20,000.00.
 - ii. University of Birmingham (claim B) - £18,737.35.
 - iii. University of Bath (claim C) - £13,229.55.
 - iv. The Chancellor, Masters and Scholars of Cambridge University (Claim F) - £20,000.00.
 - v. Kings College London (claim G) - £11,724.46.
 - vi. University of Southampton (claim H) - £1,593.87.
 - vii. Camden & Islington NHS Foundation Trust (claim I) - £10,789.87.
 - viii. University College London (claim I) - £19,844.91.
 - ix. University of East London (claim I) - £14,096.25
 - x. Royal Holloway and Bedford New College (claim I) - £20,000.00.
 - xi. South London & Maudsley NHS Foundation Trust (claim J) - £16,974.90.
 - xii. Kings College London (claim J) - £11,724.46.
 - xiii. Camden & Islington NHS Foundation Trust (claim J) - £10,789.87.
 - xiv. St Georges, University of London (claim K) - £11,811.00.

- xv. Green Templeton College (claim M) - £19,975.71.
- xvi. Magdalen College (claim M) - £18,079.32
- xvii. Pembroke College (claim M) - £18,367.67
- xviii. Somerville College (claim M) - £18,990.70.
- xix. St. Anne's College (claim M) - £17,209.52.
- xx. St Catherine's College (claim M) - £17,477.75.
- xxi. St Hugh's College (claim M) - £17,015.38.
- xxii. St Peter's College (claim M) - £17,087.06
- xxiii. Worcester College (claim M) - £16,383.06.
- xxiv. Christ Church (claim M) - £20,000.00.
- xxv. The Chancellor, Masters and Scholars of Cambridge University (claim N) - £20,000.00.
- xxvi. Hughes Hall (claim N) - £18,747.34.
- xxvii. St Edmund's College (claim N) - £18,747.34.
- xxviii. Wolfson College (claim N) - £18,747.34.
- xxix. Magdalene College (claim N) - £18,747.34.
- xxx. Wescott House (claim N) - £18,747.34.
- xxxi. Ridley Hall Theological College (claim N) - £18,747.34.

WRITTEN REASONS

Introduction

1. In the Judgment promulgated following the first preliminary hearing, PH1, which took place between 1 and 4 December 2020, it is confirmed at paragraph (10) of the Judgment section that the Employment Tribunal had determined that a costs award should be made against the Claimant in favour of the respondents in relation to those claims that had been dismissed and/or struck out.
2. Paragraphs 87 to 104 (inclusive) of the Written Reasons set out the Tribunal's findings of fact in relation to the issue of costs. The reasons for the Tribunal's decision to award costs is set out at paragraphs 145 to 152. Those reasons included that the Claimant had acted with hostility towards the respondents and had unfairly and unreasonably attempted to pressurise them into settling his claims on the basis of misguided and/or misconceived assumptions.
3. The Tribunal concluded at paragraph 146 of the Written Reasons that it would have been reasonable for the Claimant to have withdrawn his claims long before PH1, had he properly engaged with the respondent's arguments as to why his claims had no reasonable prospect of success.

4. Following a further preliminary hearing for case management that took place on 5 February 2021, the following orders were made in relation to the determination of the amount of costs that the claimant should pay to the respondents:

Costs Order (all claims except D, E, O and P)

1 Any outstanding matters relating to the Respondents' applications for their legal costs (excluding VAT and on the standard basis) are to be dealt with on the papers.

2 The amount of any costs order will be determined following a summary assessment carried out by the Employment Judge pursuant to rule 78(1)(a) of the Employment Tribunal Rules of Procedure 2013.

3 By 4pm on 5 March 2021, the Claimant shall send to the Employment Tribunal and the Respondents all evidence and submissions he relies on in respect of the question of his ability to pay any costs award (see rule 84 of the ET Rules).

*4 If the Claimant wants the Employment Tribunal to take his ability to pay into account, he should complete an EX140 form (see Oni v NHS Leicester City [2013] I.C.R. 91). This is available on the internet at the following link <https://www.gov.uk/government/publications/give-a-record-of-evidence-individual-debtor-form-ex140> . The completed form EX140 shall be sent by the claimant to the tribunal and to the respondents **by 4pm on 5 March 2021**.*

5 By 4pm on 26 March 2021 the Respondents shall send to the Employment Tribunal and the Claimant:

- a. Any written submissions the Respondents want to make on the amount of any costs order, and the Claimant's ability to pay; and details of the legal principles applicable to a summary assessment under rule 78(1)(a).*
- b. Their cost schedules and any supporting information relied on.*

6 By 4pm on 16 April 2021, the claimant shall send any further representations he wants the Tribunal to take into account in relation to the written submissions made, the costs schedules, and any supporting information.

7 All of the information received will then be considered by the Employment Judge and a decision made on the papers as soon as possible thereafter.

5. A number of respondents have decided not to pursue the application any further. However, various applications for costs have been made. The claimant was copied into emails from the respondents' representatives to the tribunal setting out the legal and factual basis for the applications, and the amounts claimed.

6. In an email sent by the claimant to the tribunal and others on 26 March 2021, he states:

The Respondents are on notice that the Claimant does not possess assets/savings beyond c.£589.00 (five hundred and eighty-nine pounds); and (deceasing daily) (sic) current account £994.37 (nine hundred and ninety-four pounds and 37 pence); and currently receives DWP Universal Credit of £227.92 pcm (two hundred and twenty-seven pounds and 92

pence). The Respondents have previously been informed that the Claimant is unemployed and unwaged.

The Claimant denies liability for costs. Judgements have been obtained due to the perverting of justice, false statements false evidence, and gross misconduct, a broken prejudicial and corrupted Employment Tribunal Service, violations of the Claimant's Fundamental Freedoms and Human Rights, and breaches of Statutory Duties. Those responsible are liable to the Claimant. All CVP hearings were and remain a violation of the Claimant's Human Rights under Articles 2, 6, 8, 14 HRA 1998; and London Central Employment Tribunal has not sought consent nor obtained consent from the owner of private property (not the Claimant) to requisition private property as an extension of the physical buildings of the Employment Tribunal Service; arising due to systemic failures and breaches of Statutory Duties of the Senior President of the Tribunals and Ministry of Justice.

7. The claimant did not complete form EX140 as he had been ordered to do.
8. An email was sent to the parties by the tribunal on 27 May 2021, which confirmed that the applications for costs that had been received and considered by the judge and further which stated:

*If however there are any other respondents who have sent in applications for costs, but which are not listed above, those respondents are directed to copy those to this email address, with a copy to the London Central email address, **by 4pm on 11 June 2021.***

9. The claimant was specifically directed to:

*confirm **by 4pm on 11 June 2021** whether he owns his own home or any other properties. The claimant is also directed to send a completed form EX140 **by 4pm on 11 June 2021.***

10. A small number of respondent's representatives subsequently re-submitted applications for costs, that had previously been sent to the tribunal, but which had not by that stage been forwarded to the judge. In addition, representatives acting for the University of Southampton in claim H (R2), made a late application for costs on 11 June 2021, limited to counsel's fees in the sum of £1,593.87.
11. The claimant responded to the application by the solicitors for the University of Southampton on 16 June 2021. He opposes the application by Southampton University on the basis that it had not been submitted in time in line with the original directions of the tribunal.
12. The claimant has still failed to submit a completed form EX140, despite having been directed to do so on two occasions. Nor has he specifically confirmed whether he owns his own home. His failure to do so demonstrates disrespect for tribunal orders.
13. On the basis of the information currently before the tribunal, the tribunal is in a position to determine the amounts to be awarded in relation to the costs claimed. In determining the amounts to be awarded, the tribunal has taken into account the relevant legal principles, as set out below.

The Law

14. Rule 76(1) Employment Tribunal Rules of Procedure 2013 provides:

A Tribunal may make a costs 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 prospect of success.

15. Rule 78 (1) provides that 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...

16. Rule 84, headed 'Ability to pay', provides:

In deciding whether to make a costs, preparation time, or wasted costs order, and if so in what amount, the Tribunal may have regard to the paying party's (or, where a wasted costs order is made, the representative's) ability to pay.

17. The purpose of an award of costs is to compensate the party in whose favour the order is made and not to punish the paying party. Questions of punishment are irrelevant both to the exercise of the discretion whether to award costs under Rule 76(1) and to the nature of the order that is made (see Lodwick v Southwark London Borough Council [2004] EWCA Civ 306, [2004] IRLR 554, at para 23; and Davidson v John Calder (Publishers) Ltd and Calder Educational Trust Ltd [1985] IRLR 97, [1985] ICR 143, EAT).

18. The Court of Appeal in Yerrakalva v Barnsley Metropolitan Borough Council and ors [2012] ICR 420, CA, held that costs should be limited to those 'reasonably and necessarily incurred'.

19. The findings in the judgment relating to PH1, as summarised above, in relation to the claimant's unreasonable conduct of the proceedings, may also be relevant to the assessment of the amount of costs to be awarded - Yerrakalva v Barnsley Metropolitan Borough Council and anor [2012] ICR 420, CA.

20. The Court of Appeal in Kovacs v Queen Mary and Westfield College and another [2002] EWCA Civ 352 held that although a tribunal may take a party's ability to pay into account, this does not mean that:

poor litigants can behave with impunity and without fearing that any significant costs order will be made against them, whereas wealthy ones must behave themselves because otherwise an order will be made.

21. Where the tribunal has regard to ability to pay, a tribunal must show that it has given proper consideration to such matters as future earning capacity and, where appropriate, the alternatives to making a whole costs order. The failure to do so may well result in the case being remitted to the tribunal - see Herry v Dudley Metropolitan Council [2017] ICR 610, EAT. In Herry, a tribunal ordered an impecunious claimant to pay all the respondents' costs, which, after a detailed assessment, amounted to over £110,000. It had regard to his ability to pay and

held that, although he was currently off work due to stress, it was likely that he would return to work as a teacher and that his circumstances 'may well improve' in the future. However, what it did not do, according to the EAT, was to consider what the claimant's earning capacity and likely net earnings might be nor did it consider whether an award of the whole costs was reasonable and proportionate in the circumstances (see para 42). Judge Richardson, giving judgment, stated that it was difficult to see how he could pay off a figure 'remotely close' to the sum ordered, and that the tribunal did not explain how he could do so. Having decided to take ability to pay into account, 'there was an obvious case for capping the award or ordering a proportion of the award', yet the tribunal did not explain why it did not consider this option (para 42). The case was, accordingly, remitted to the same tribunal to consider these matters.

22. As noted by the EAT in Sumukan (UK) Ltd and nor v Raghavan UKEAT 0087/09, the tribunal must state:

on what basis — and in accordance with what established principles — it is awarding any sum of costs (which the PH1 judgment has already done in relation to the decision to award costs in principle);

on what basis it arrives at the sum; and

why costs are being awarded against the party in question.

23. The case of Mirikwe v Wilson & Co Solicitors and others UKEAT/0025/11 is authority for the making of a costs order in circumstances where the paying party has made no submissions as to their ability to pay costs or any appearance in the costs proceedings. The unreasonableness of a party's conduct can be taken into account in deciding whether to take ability to pay into account, and the failure to make submissions or take part is relevant conduct.

24. In Oni v NHS Leicester City (formerly Leicester City Primary Care Trust) [2013] JCR 91, EAT, Judge Richardson pointed out that if means have not been taken into account, and the case subsequently goes to the county court, the form upon which the paying party will set out his or her means is Form EX 140. He therefore suggested that a possible solution to the problem of how a litigant in person should deal with the question of means where he is confronted with an application for costs is for the tribunal, at least where it is giving directions in advance relating to a costs hearing, to say that a party who wishes his or her means to be taken into account should complete this form (see para 46).

Conclusions on costs

25. Bearing in mind the matters referred to in Sumakan, these conclusions first set out the basis on which, and the principles applied, in deciding what sum of costs to award; second, on what basis the tribunal has arrived at the sums awarded; and third, why those sums have been awarded against the claimant. These are dealt with in turn below.

The basis on which costs have been awarded

26. As for the basis upon which costs are being awarded, those have already been set out in the judgement following PH1. The other legal principles that have been applied are set out in the Law section above and are further summarised where applicable in the following section setting out why costs are being awarded.

The basis for the sums awarded

27. None of the amounts claimed have been challenged by the claimant. Those amounts appear to the tribunal to have been reasonably and necessarily incurred. In the absence of any challenge at all by the claimant to those amounts, there is no information upon which the tribunal could reasonably conclude otherwise.
28. The amounts claimed have on the whole excluded VAT. Where VAT has been inadvertently included, the sums have been reduced accordingly.
29. The amounts claimed appear on the whole to reflect the guideline hourly rates set by the courts. That did not appear to be the case in relation to the claims for costs in relation to the Oxford Colleges. It was suggested in the tribunal's email of 27 May 2021, that a broad-brush approach be taken, by allowing 65% of the amounts claimed - save for those instances where that still exceeded £20,000, in which case the amounts awarded would be limited to a maximum of that sum. To the tribunal's knowledge, those respondents have not objected to that suggested approach. Nor has the claimant.
30. In most instances, the amounts claimed were below the maximum a tribunal can award on summary assessment. The exceptions being the claim on behalf of the University of Warwick in claim A (£35,657.10); the University of Cambridge in claims F and N (£25,837.42 and £27,684.92 respectively); The Royal Holloway and Bedford New College in claim G (£20,898.12); and Christ Church in claim M (£23,877.18 after the 35% discount has been applied).
31. In some instances, costs have been claimed in relation to the same respondent, in more than one set of proceedings. In arriving at an appropriate sum, the tribunal has considered it appropriate and proportionate to split the costs equally between each claim. Hence the amounts awarded to Kings College London in claims G and J (arrived at by dividing the total sum claimed in half); similarly, in relation to Camden & Islington NHS Foundation Trust (claims I & J); and in claim N, in which the total amount claimed on behalf of the Cambridge Colleges has been divided by six.
32. I note in passing at this stage, that taking into account the actual amounts claimed (save in the case of the Oxford colleges, where just 65% of the actual amounts claimed has been used for the calculation), the costs are in excess of £500,000. That is just in relation to the respondents who have gone on to claim costs in the proceedings to which these claims relate. It is likely that the total cost, including those incurred by both parties were not pursuing the claim in these particular proceedings, and in relation to the other claims it is so far been determined, namely D, E, O and P, that the costs will be in the region of £750,000. That is a substantial amount, on any reckoning.

Why the sums have been awarded

33. In deciding what amounts to award, I have reminded myself that the purpose of a costs award is to compensate, not punish. I have concluded that the power granted by Rule 78(1)(a), in a summary assessment, is to award up to £20,000 to each respondent, in each separate claim.

34. I have taken into account my previous finding that in bringing and maintaining these proceedings, the claimant has acted unreasonably. That is also reflected, amongst other things, in the finding that the claims were also totally without merit.
35. The tribunal has a discretion to take into account a party's ability to pay. The tribunal is entitled in appropriate circumstances to decide not to do so. The Tribunal has determined in this case that it is not appropriate to take into account the claimant's ability to pay. That is partly because of his unreasonable conduct leading up to the award of costs. It is also partly because of the claimant's failure to comply with the order to complete form EX140, which would have put before the tribunal all relevant information about means, in a format which is subject to a signed statement of truth. In line with the case of Oni, the claimant was ordered to complete Form EX140 if he wanted the tribunal to take into account his ability to pay. He has failed to do so, twice. Nor has the claimant confirmed, as ordered to do on 27 May 2021, whether he owns his own home. His continuing failures to comply with tribunal directions also amount to unreasonable conduct.
36. The purpose of ordering the claimant to complete form EX140, was to ensure that all relevant information was before the tribunal, before determining the amounts to be awarded against the claimant. It is not for the claimant to decide how to respond to tribunal orders by simply sending an email with some information about means contained in it instead.
37. In such circumstances, I have determined that the appropriate course of action is not to exercise the discretion given to the tribunal by rule 84.
38. As for the award in relation to the University of Southampton, the tribunal has taken into account that this was not made until a second opportunity had been given to the University to do so. However, the amount claimed is modest, and limited to counsel's fees, not the solicitors costs incurred by the University. In such circumstances, the tribunal considers it just to award the modest sum claimed.
39. Having taken all of the above into account, the decision of the tribunal is to award the amounts set out in the judgement above.

Employment Judge A James

13 August 2021

Sent to the parties on:

16/08/2021

For the Tribunal:

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**ANNEX A – TABLE OF CLAIMS AND RESPONDENTS
SUBJECT TO THE COSTS JUDGMENT**

<u>Case no</u>	<u>Respondents</u>
A 1303049/2018	R1 University of Warwick
B 1303517/2018	R1 Birmingham University
C 1400476/2018	R2 University of Bath
F 2205140/18	R5 The Chancellor, Masters, and Scholars of the University of Cambridge
G 2205365/18	R1 King's College London
H 2206127/18	R2 University of Southampton
I 2206128/18	R2 Camden & Islington NHS Foundation R3 University College London R4 University of East London R7 Royal Holloway and Bedford New College
J 2300463/18	R1 South London & Maudsley NHS Foundation Trust R2 King's College London R5 Camden & Islington NHS Foundation Trust
K 2302437/2018	R1 St George's, University of London

Case Number: 1303049/2018 & others (see annex A)

M 3306697/2018	R2 Green Templeton College R4 Magdalen College R5 Pembroke College R6 Somerville College R7 St. Anne's College R8 St Catherine's College R9 St Hugh's College R10 St Peter's College R11 Worcester College R12 Christ Church
N 3307522/2018	R1 The Chancellor, Masters and Scholars of Cambridge University R2 Hughes Hall R3 St Edmund's College R4 Wolfson College R5 Magdalene College R6 Wescott House R11 Ridley Hall Theological College