EMPLOYMENT TRIBUNALS

Claimant: **Mr D Quarm**

Respondent: **The Commissioner of Police of the Metropolis**

Heard at: **East London Hearing Centre**

On: **8th October 2021**

Before: **Employment Judge Reid**

Representation
Claimant: in person
Respondent: Mr De Silva, QC (instructed by Capsticks)

COSTS JUDGMENT (Reserved)

1. The Tribunal makes an award of costs under Rule 76(1) (a) and (b) of the Tribunal Rules 2013 of £3,566 plus VAT, **total £4,279.20 including VAT** against the Claimant and in favour of the Respondent.

2. The costs are payable by the Claimant to the Respondent within 28 days of the date of this judgment.

REASONS

1. Following the Tribunal's judgment on the strike out application given orally on 8th October 2021 the Respondent made an application for costs under Rule 76(1) (a) (unreasonable bringing of the claims) and (b) (no reasonable prospect of success – in line with the strike out decision) of the Tribunal Rules 2013.

2. The Respondent claimed £10,375.20 (including VAT) being all solicitors' fees since the commencement of the claim plus Counsel's fees for drafting the response, for preparing for the preliminary hearing and for attendance at the preliminary hearing.

3. A costs warning had been sent to the Claimant on 7th October 2021 notifying him that the costs were in the region of £10,000 and inviting him to withdraw his claims. The letter set out the matters relied on in terms of the timeline of events.

Relevant law

4. The relevant Tribunal Rules are Rules 74-84 of the Tribunal Rules 2013. Costs in the Employment Tribunal are the exception rather than the rule and there is a high threshold.

5. There is a two stage test, to consider firstly whether the relevant ground under Rule 76 is made out and then if it is, secondly whether the Tribunal should exercise its discretion to award costs.

6. The Tribunal may (but is not required to) take into account the paying party's ability to pay in deciding whether to make a costs order and if so in what amount (Rule 84).

7. *Yerrakalva v Barnsley Metropolitan Borough Council [2012] ICR 420* requires the Tribunal to consider all the circumstances as a whole. and *McPherson v BNP Paribas [2004] IRLR 558* establishes the need to consider the nature, gravity and effect of the claimed unreasonable conduct.

8. In *AQ Ltd v Holden 2012 IRLR 648* the EAT stated that the threshold tests governing the award of costs are the same whether a litigant is or is not professionally represented, but that the application of those tests should take this factor into account. However, a litigant in person can be found to have behaved unreasonably even when proper allowance is made for their inexperience and lack of objectivity.

9. I was referred to *Opalkova v Acquire Care Limited EAT00562/2021* and the three key questions at para 24-25 in cases where the issue is one of no reasonable prospects of success and also one of unreasonable conduct in pursuing the claim (in that case considering a preparation time order).

10. There is also Presidential Guidance on costs (Presidential Guidance; General Case management – Guidance Note 7 Costs) which I have taken into account.

Findings relevant to costs application

Grounds for making a costs award on the three claims in the claim form

11. I have already struck out the three claims covered by this claim number under Rule 37(1)(a) of the Tribunal Rules on the basis that each of them has no reasonable prospect of success.

12. I have found that the claimed detriment of an unreasonable delay by the Respondent in dealing with the Claimant's Barclays re-mortgage application has no reasonable prospects of success. The Claimant had decided by 1st February 2021 (the date he contacted ACAS) that he was likely to bring a claim; he is an experienced litigator in this Tribunal and aware that contacting ACAS would be the first step in any new claim. By 22nd February 2021 the date of claim the Claimant had already decided that there had in his view been an unreasonable delay by the Respondent in dealing with

the obtaining of the new Deed for the Barclays re-mortgage. The first contact about the Barclays re-mortgage had been from Enact solicitors on 25th January 2021 and at no stage did the Claimant or Enact tell the Respondent before the claim form was presented that there was a deadline of 1st March 2021; in fact the Claimant told the Respondent that the deadline was 1st February 2021 (and even then only a few days before that date) and yet then delayed in asking Barclays for an extension until 19th February 2021; the ball was by then in his court to get that extension if one was required.

13. Taking the above findings into account the Claimant decided, when he had only recently a few days previously asked for an extension from Barclays (his account), to present this claim form claiming an unreasonable delay by the Respondent. It was by now only around 4 weeks since Enact had first contacted the Respondent about the Deed and the Claimant was aware that the Respondent was replying to correspondence and that the Deed had to be issued by the Mayor's Office. He had been asked by the Respondent some two weeks previously to get an extension to what the Respondent had been told was the deadline (even though it apparently wasn't the deadline). On his account he contacted Barclays for an extension on 19th February 2021 (a Saturday) and presented this claim the following Tuesday 22nd February 2021.

14. In submissions the Claimant appeared to suggest that he could not accept that the Respondent had not been aware of the 1st March 2021 deadline and thus of an urgency due to that, but the Claimant knew he had only told the Respondent about his own earlier deadline of 1st February 2021. He knew the Respondent had asked him to get an extension but knew he had not done so for around a further two weeks. He knew when he presented the claim form on 22nd February 2021 that he had only asked for the extension on 19th February 2021 during the previous weekend. Even if the deadline was 1st March 2021 he was still some days away from that deadline and in any event it was a deadline he knew the Respondent was not aware of.

15. Applying the three key questions in turn, the first question is whether when the three claims included in this claim form were presented did they objectively have no reasonable prospects of success (or was there a later stage when they ceased to have reasonable prospects). Taking into account the findings and conclusions in the judgment dated 8th October 2021 each of the three claims had no reasonable prospects of success when the claim form was presented.

16. Secondly the question is whether the Claimant knew when he presented his claim form that the three claims had no reasonable prospects of success. Taking into account the findings at paras 12-14 above I conclude that the Claimant was aware that his claims had no reasonable prospects of success when he presented his claim form, even if he did feel worried about a repeat of what he felt had gone wrong on the previous Halifax re-mortgage application. He had already decided on 1st February 2021 that he might bring a claim based on delay by the Respondent but knew the Respondent had written to him only a few days before reasonably asking him to ask for an extension and had then waited only a further around 3 weeks before putting in a claim form, and only towards the end of that period contacting Barclays for an extension (his account).

17. Thirdly, even if the Claimant had not known when he presented his claim form that the three claims contained in it each had no reasonable prospects of success, he should have done so because he could have sat down and looked at the chronology of what had happened, what he had told the Respondent, the fact that Mayors Office approval was required (something outside the Respondent's control to an extent), the pattern of correspondence and his own actions in making sure that an eye was kept on any real deadlines. He is an experienced litigator in this Tribunal over a number of years and is not in the same position as an unrepresented claimant who has no knowledge or experience. In particular he has brought previous claims under the Equality Act 2010 and previous whistleblowing claims. If he did not know his claims had no reasonable prospects of success, it was because he was unable to see beyond his (unreasonable) perceived version of events and his very early assumption on 1st February 2021 when he contacted ACAS that there was going to be a problem with delay. In submissions he said that he was within his rights to be worried about the source of the delay when he made his claim and referred to examples of police wrongdoing being investigated more widely. However to get the point of motive there has to first be an unreasonable delay by the time he presented his claim and he should have realised (taking into account he might be less objective, but balancing that against his significant past experience of Tribunal claims over many years) that firstly looking at it in the round there had been no unreasonable delay by the Respondent (although it was frustrating) and secondly the existence of investigations into police misconduct/corruption more widely did not automatically support his claim as to the reason for his particular treatment in the very particular situation he was in. He also said during submissions on the strike out application that he had presented his claim after seeing the Daily Mail article referring to him which a colleague had alerted him to on 19th February 2021 and felt this portrayed him as 'clogging up' the Tribunal system; the trigger for his claim was therefore his upset regarding this article as much as any genuine belief that the Respondent was unreasonably delaying obtaining the Barclays Deed from the Mayor's Office.

18. I therefore conclude that both of the grounds under Rule 76(1)(a) (unreasonable conduct in bringing the claims) and Rule 76(1)(b) (claims having no reasonable prospect of success) are satisfied in relation to each of the three claims and that a costs order should be considered.

Discretion whether to make a costs award on the three claims in the claim form

19. The Respondent issued a costs warning to the Claimant on 7th October 2021, the day before the preliminary hearing. The existence of that costs warning is a relevant factor, taking into account the grounds set out at paras a-f are matters on which I have made findings in the Respondent's favour in the judgment dated 8th October 2021. In addition it is relevant that the Respondent had asked for a preliminary hearing for a strike out/deposit order.

20. It also relevant when that warning was given, namely the day before the preliminary hearing.

21. The Claimant is unrepresented but is an experienced litigator in this Tribunal against this Respondent.

22. A relevant factor is also that the Claimant has brought multiple previous Tribunal claims against this Respondent over many years. Of the 16 claims presented before this one they have all been struck out or dismissed except for claims 14 and 15 which have not yet been listed. A costs order of £18,000 was made in relation to claims 6-9 in respect of which the Respondent obtained a charging order.

23. As to whether I should exercise my discretion to award costs I have taken into account the Claimant's ability to pay. He has provided a statement of his means showing his average monthly income and his monthly costs from which he says he is left with around £100 disposable income per month. He set out his existing mortgage commitments but did not provide any details of any remaining equity in his home The Respondent made the point in submissions that it could, as it has already, obtain a new charging order on his property.

24. Weighing these factors up up I conclude that the high threshold is met for a costs award to be made and that I should exercise my discretion to award costs against the Claimant and in favour of the Respondent.

Amount of costs award

25. As to the amount I take into account that the costs warning was given on the day before the preliminary hearing leading to the strike out of his claims, although the Claimant had been on notice since receipt of the Respondent's response that a strike out application would be made.

26. I also take into account the Claimant's ability to pay. He has the means to meet an order taking into account he owns a property.

27. I therefore make an award of costs of £3,566 plus VAT (ie Counsel's fees for preparation and attendance at the hearing of £3,485 plus solicitors' costs attendance of £81), total £4,279.20 including VAT.

28. I do not award the entirety of the costs claimed because in exercising my discretion I have taken into account when the costs warning was given and have awarded the costs of preparation for and attendance at the preliminary hearing. Whilst all of Counsel's fees had already been incurred by the day before the preliminary hearing (so even if the Claimant had decided to withdraw his claim, the Respondent would have incurred these costs in any event) it is appropriate to award these costs because they represent in practice what the Respondent incurred in having to prepare for and proceed with the preliminary hearing. Whilst I have found that the Claimant was aware when he presented his claim that each of the three claims had no reasonable prospects of success (or, if he did not know he should have done) I have not awarded costs prior to these preliminary hearing costs taking into account the timing of the costs warning and the fact that the Claimant would in particular have understood that attendance at a hearing would significantly increase the Respondent's costs.

29. The costs are payable by the Claimant within 28 days of the date of this judgment. I have extended the 14 day default timescale in Rule 66 to enable the Claimant to assess his finances.

Employment Judge Reid
Date: 13th October 2021