# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Ireland

**Respondent:** University College London

**At:** London Central Employment Tribunal

**Before:** Employment Judge Brown

# SECOND COSTS JUDGMENT

**The judgment of the Tribunal is that:**

**1. EJ Brown does not recuse herself; there are no proper grounds for doing so.**

**2. The Claimant's applications for wasted costs dated 10 and 24 July 2021 are dismissed.**

## REASONS

**Preliminary**

1. By a Judgment promulgated on 25 March 2021 the Tribunal dismissed the Claimant's of race discrimination claim against the Respondent.

2. By a Judgment promulgated on 27 June 2021 the Tribunal ordered the Claimant to pay the Respondent's costs of the proceedings in the sum of £14,000.

3. On 10 July 2021 the Claimant made a written "Wasted costs application" against the Respondent's representatives in respect of "preparation of Rule 71 costs Judgment reconsideration application." The application was in the following terms;

> *"Wasted Costs*
> *I have regularly warned the respondent's representative that I will not allow it to rewrite in its client's favour what occurred during the withdrawal of my offer. However, it was clearly intent on avoiding the reputation damage of backing down to a litigant in person, and proceeded to subject me to 16 months of unscrupulous and unethical conduct as detailed below. I therefore claim ten hours preparation time @ £41ph for preparation of my Rule 71 costs Judgment reconsideration application dated 10 July 2021, totalling £410, in response to James Major of Clyde & Co's highly improper and unethical attempt to*

*effectively defraud me via the costs Judgment. I rely on the chronology of the persistently unreasonable, unethical & fraudulent conduct set out below:*
*1) November 2019 - The respondent's submitted grounds of resistance included false statements including:*
*● Point 7.3 "Referee 3 did not respond to the Respondent's attempts to contact them". This was my most recent referee at University of Oxford, and the Respondent made this false assertion in the full knowledge that my conditional offer was withdrawn on Wednesday 24 June 2019, only three working days after references were requested on Friday 19 June 2019, as confirmed by the findings of the liability Judgment. Three working days is clearly insufficient to deem a failure to reply, as made clear in 3.9 of my witness statement.*
*● Point 8 "In accordance with its recruitment & selection policy, the Respondent withdrew the job offer from the Claimant". The respondent made this false assertion in the full knowledge that its recruitment & selection policy required Ms Fahad to obtain my most recent reference, as set out at 3.8 of my witness statement, but she did not want to await its arrival or consider its content, as confirmed by Point 68 of the liability Judgment.*
*● Point 7 "The references received were unsatisfactory". The respondent made this false assertion in the full knowledge that it received only one reference, as confirmed by Point 122 of the liability Judgment, and that the sole reference received was vague and subjective. 16.65 of the EHRC Statutory Employer Code required Ms Fahad to contact me about this reference in order to demonstrate that she was not acting in a discriminatory manner. Point 3.6 of my witness statement informed the liability hearing that the respondent had not complied with this EHRC requirement.*
*2) November 2019 - The respondent committed an abuse of process by seeking a strike out hearing based on knowingly false assertions, per point 1 above. The respondent then twice requested that the disclosure order be set aside, because it knew that documentary evidence existed which proved that the assertions in the above bullet points were false.*
*3) February 2020 - On the disclosure deadline date of 14 February the respondent failed to disclose key emails sent between Ms Fahad and HR on 24 June 2019, the day of offer withdrawal, which showed exactly what happened on that day. The respondent disclosed them over a month later following a direct request from myself. I gained awareness of these emails from receiving redacted versions in an SAR. Had I not performed the SAR, the respondent would never have disclosed these emails, in clear breach of its disclosure obligations.*
*4) February 2020 - The respondent entered a redacted version of the sole reference it received in the bundle, which was from my least recent employer Plymouth University. The name of the referee and employer, and the dates of employment, were concealed. In their place the respondent used a false "Referee 1" label in the full knowledge that my referee 1 and most recent employer on my application form as contained in the bundle was actually University of Oxford. This sought to mislead the Tribunal into believing that a reference from my most recent employer had been obtained and considered in compliance with its recruitment & selection policy, when it knew Ms Fahad had breached the policy by stating that she did not care what my most recent referee would say when the reference arrived. In May 2020 EJ Quill ordered the respondent to enter an unredacted version of this reference in the bundle, but*

*the respondent failed to do so prior to the preliminary hearing held in June 2020, and I had to insist the respondent do so to several months later when it was clear it intended to avoid doing so for the liability hearing.*
*5) February 2020 - The respondent's employee relations director disclosed an incomplete email exchange between myself and him occurring in July-August 2019 which gave the impression that I had not set out the issues to him clearly prior to commencing tribunal proceedings. EJ Quill's email of 22 May 2020 reminded the respondent that relevant emails must be disclosed. As the respondent had already disclosed all prior emails in this exchange, the full email exchange was relevant.*
*6) March 2020 - In compliance with the overriding objectives' requirement to avoid delay and minimise costs, and the following March 2020 Covid-19 Presidential Guidance: (6) the tribunal to issue written orders and directions to gather information about some of the issues which a judge might, in normal circumstances, consider are best discussed with parties at an in-person hearing (10) an Employment Judge could order that parties cooperate with each other in producing a statement of agreed facts and a list specifying facts in dispute that require to be determined. (11) during the pandemic, it would be appropriate for written submissions to be used, with each party having the opportunity to comment on the submissions made by the other side. I sent the respondent a questionnaire on 30 March which, had it been able to credibly answer my questions, would have wholly undermined my case and earned it a strike out at the June 2020 preliminary hearing. The respondent refused to cooperate as it knew that doing so would expose fatal flaws & dishonesty in the ET3 which would have won me a strike out instead. The respondent subsequently avoided calling any witnesses at the preliminary hearing to answer these questions, thus causing the proceedings to continue to a full hearing.*
*7) April 2020 - I sent the respondent's representative a preparation time costs warning informing it that its position and attempt to rewrite what occurred during the withdrawal of my offer was clearly unmeritorious. This was disregarded.*
*8) June 2020 - Prior to the preliminary hearing the respondent breached two CMO's by*
*● failing to send my witness statement to the Tribunal*
*● changing the bundle page numbering after the bundle finalisation deadline which damaged the bundle page number referencing in my witness statement*
*9) June 2020 - In a strike out application the respondent asserted that there could not be a fair trial because I had sent angry emails about the respondent's HR staff to its representative. EJ Quill rejected this, declined to reduce the listing from 3 days to 1-2 days, and stated that the HR witnesses should attend the liability hearing.*
*Nevertheless, the respondent failed to produce witness statements for them on the November 2020 deadline, in the full knowledge that it had falsified HR assertions in its grounds of resistance, per point 1 above.*
*10) June 2020 - At the preliminary hearing the respondent misled EJ Quill into deciding that:*
*● The basis of my case was an inference that the interview panel was selected to be biased against me. EJ Quill entered this in the deposit order, and then acknowledged it was untrue in a reconsideration email*
*● My most recent referee at University of Oxford had failed to reply, when the respondent had withdrawn my offer only three days after references were*

*requested as the recruiting manager Ms Fahad was not interested in what my most recent referee would say, which breached the respondent's recruitment & selection policy*

*11) November 2020 - the respondent breached the disclosure order by stating that research information it held on failures of its procedures to prevent racial bias in colleague recruitment did not exist. An Information Commissioner Decision Notice subsequently proved this to be a false assertion and also stated that the respondent's lack of transparency had breached the FOIA.*

*12) November 2020 to January 2021 - The respondent refused to comply with several document disclosure requests by citing irrelevance, even though the documents related to*

*● baseless assertions in the sole witness statement produced by the respondent*

*● matters that EJ Quill had stated in his deposit order could be resolved at the liability hearing*

*The respondent was subsequently ordered to disclose some of these document at the liability hearing.*

*13) February 2021 - the respondent stated that it would be "severely prejudiced" if its HR witnesses were ordered to attend the liability hearing, even though it had described them as its "likely witnesses" in its May 2020 strike out application and EJ Quill had stated that they should attend.*

*14) March 2021 - At the commencement of the liability hearing the respondent's counsel misled the Tribunal by asserting that all disclosure had been finalised. This was evidently untrue as the respondent was subsequently ordered by EJ Brown to disclose several documents, and two other documents remained concealed which form the basis of points 1 and 2 of my liability Judgment reconsideration application. These two documents could have proved dishonesty in the respondent's sole witness statement. I consider their dishonest concealment to have perverted the course of justice.*

*15) March 2021 - The respondent's sole witness dishonestly asserted that her reason for withdrawing my offer was that "I have never had an instance like this before where I have not had at least one strong reference for an individual", per Points 85 and 126 of the liability Judgment, in full contradiction of her own witness statement and the cogent email evidence which showed that she did not care what my most recent referee might say upon responding, causing her to withdraw my offer only three working days after my referees were contacted, in breach of the respondent's recruitment procedure. I consider this to have been an act of perjury, which led to the Tribunal becoming muddled and making contradictory findings of fact, as covered in Point 8 of my liability Judgment reconsideration application.*

*16) Upon succeeding at the liability hearing, the respondent's counsel sought an immediate costs hearing in breach of a case management summary agreement, and in the full knowledge that the liability hearing success had been achieved via the persistently oppressive and manipulative dishonesty outlined in points 1-15 above.*

*The respondent should submit any objections as soon as possible."*

4. On 20 July 2021 the Respondent objected, in writing, to the wasted costs application.

5. The Claimant made a second wasted costs application on 24 July 2021. It was in the following terms:

> *"As a consequence of the Tribunal's costs Judgment sent to the parties on 27 June 2021 in which the respondent seeks to misrepresent the deposit order findings in order to defraud me of my £1000 deposit, it is reasonable to consider that appeal UKEATPA/622/20/VP re the deposit order no longer serves any useful purpose as it cannot prevent the respondent's fraudulent use of the deposit order at the costs hearing. This must instead be cured via superseding applications to the Tribunal and EAT, and if necessary via judicial misconduct proceedings. I therefore claim wasted preparation time of four hours for submission of appeal UKEATPA/622/20/VP on 24 July 2020 and two hours for submission of my 23 February 2021 Notice of Dissatisfaction to the EAT, against the respondent or its representative, totalling £246.*
>
> *I rely on the below chronology of the respondent's improper conduct with regard to the two 2020 preliminary hearings and its fraudulent use of the deposit order to obtain the costs Judgment:*
>
> *7 October 2019 - I submitted the ET1, which utilised 2,496 of the 2,500 available characters in the "Details of your Claim" textbox. The third paragraph of my text cited "several ways" in which the respondent had sought to mislead me on the status of my references, and set out brief details of one of these regarding the recruiting manager's mental processes whereby she knew that a reference was available from my most recent employer but she did not want it, based on my reasonable belief at the time that she received an out of office autoreply from this referee but did not act on it.*
>
> *28 November 2019 - Section 6.3 of the respondent's grounds of resistance stated that the aforementioned auto-reply was not received. Section 15 of the grounds of resistance stated that the ET1 was not specific & indicated that further and better particulars were therefore necessary, while Section 2 of the accompanying strike out application sought to exploit this lack of further and better particulars by fabricating a misrepresentation of the basis of my claim by asserting "The Claimant's case is entirely predicated on a suspected conspiracy on the Respondent's part based on the composition of the panel that interviewed him".*
>
> *3 December 2019 - I voluntarily provided further and better particulars to the Tribunal and respondent, in which:*
> *i) Sections 1 and 2 of my document entitled "how the Respondent managed the obtaining of the Claimant's employment references" made clear that the respondent had sought to prevent me knowing what it had received from my referees prior to submitting its ET3, and Section 4 made clear that regardless of whether an out of office autoreply from my referee had been received, the recruiting manager's mental processes at the point of withdrawing my offer were that she did not want a reference from my most recent employer.*
> *ii) Section 24 of my document entitled "Prima Facie Case" made clear that I did not assert that the panel was selected to be biased against me, per the*

*respondent's aforementioned misrepresentation. Section 25 clearly set out my assertion.*

*20 December 2019 - The respondent objected to my further and better particulars by improperly stating "the Respondent intends to strongly resist it given that additional information set out in his attached documents changes and adds to the factual basis of the Claimant's ET1. Further, the Claimant could have included this information in his original ET1: such alleged acts were within his knowledge at the time of submitting the claim, and the Claimant has not put forward any reasons as to why this was excluded from his ET1." The respondent thus stated on 28 November 2019 that the ET1 was "not specific" and then on 20 December 2019 sought to obstruct it from being specific. The respondent therefore improperly sought to prevent me from:*
*i) correcting its intentional misrepresentation of the basis of my case made in its strike out application*
*ii) clarifying the moot point in the ET1 on the out of office autoreply, having previously refused to clarify what it had received from my referees prior to submitting the ET3*

*1 May 2020 - Per "Item 2 - Amendment" of the attached 1 May 2020 Record of a Preliminary Hearing, EJ Quill asked me whether there were any changes to the claim or allegations. I stated that the claim of racial discrimination was unchanged, and that the allegation that the recruiting manager improperly withdrew my offer in the knowledge that a reference was available from my most recent employer remained the same and was clarified by my further and better particulars. Per Point 2.4 of the Record of a Preliminary Hearing, EJ Quill declined to include this information in the 23 June preliminary hearing, thus obstructing clarification of the basis of my claim. Point 2.4 went on to state that this information could be entered in my witness statement for the final hearing, which I reasonably complied with six months later.*

*23 June 2020 - At the preliminary hearing EJ Quill proceeded to rely on:*
*i) The respondent's misrepresentation of the basis of my claim re the interview panel having been selected to be biased against me (as cited at Point 51 of his deposit order), despite this issue having been corrected by my further and better particulars*
*ii) The moot point on the out of office autoreply (as cited at Point 49 of his deposit order), despite this issue having been clarified by my further and better particulars*

*27 November 2020 - In reasonable compliance with EJ Quill's 1 May 2020 instructions, 3.8 to 3.11 of my liability hearing witness statement clearly set out events with regard to my most recent referee without relying on the moot point of the out of office autoreply, and 4.8 to 4.11 of my witness statement made it clear that my case was not based on the interview panel being selected to be biased against me*

*27 November 2020 - The respondent's sole liability hearing witness statement improperly sought to focus on the issue of the moot autoreply, despite having been made fully aware that this was a moot point in both my further & better*

*particulars and in deposit order reconsideration emails in July 2020. At its Point 30 the recruiting manager Loleta Fahad thus asserted " I understand that Grace emailed Referee 3 on 19 June 2019, and having not received a response, nor any out of office reply providing an alternative contact, she sent a follow-up email on Monday 24 June 2019". Cogent email evidence showed that these were not the recruiting manager's mental processes at the time of withdrawing my offer, which were instead that she knew that this reference from my most recent employer was pending but she did not want to await its arrival (in breach of the respondent's recruitment procedure).*

*25 March 2021 - In breach of its own 1 May 2020 instructions to me, the Tribunal ignored the clear details on the recruiting manager's mental processes set out at 3.8 to 3.11 of my witness statement and opted to revert to the moot point of the autoreply in the ET1, per Points 63 and 122.3 of the liability Judgment.*

*25 March 2021 (as confirmed by the costs Judgment sent on 27 June 2021) - The respondent fraudulently sought to obtain my deposit of £1000 by asserting that i) The basis of my claim was per the findings of the deposit order whereby the interview panel had been selected to be biased against me, as reiterated at Point 10 of the Costs Judgment. This is despite the liability Judgment making no such finding. ii) By again focusing on the moot point of the out of office autoreply, as reiterated at Point 38 of the costs Judgment."*

6. The Claimant applied or reconsideration of the Liability and Costs Judgments. His reconsideration applications were rejected by EJ Brown under *r72(1) ET Rules of Procedure 2013* on the grounds that there was no reasonable prospect of the original decisions being varied or revoked.

7. On 9 Augst 2021 EJ Brown wrote to the parties in the following terms, "EJ Brown apologises to the Claimant for the delay in responding to his reconsideration / recusal application dated 7 April 2021. She became aware of its existence from his costs reconsideration application. His 7 April 2021 application was located and passed to EJ Brown on 28 July 2021. The Claimant's application for reconsideration of the Liability Judgment in this case is refused - there is no reasonable prospect of the original decision being varied or revoked. The Tribunal gave full reasons for its decision at the time and the Claimant's application is an attempt to re argue the case. Insofar as the recusal application is addressed to EJ Brown and the Tribunal who heard the case, the recusal application was submitted after the liability and costs decisions had already been made by the Tribunal on the days of the hearing. The Tribunal's function was complete."

8. The Claimant continued to send correspondence to the Tribunal. For example, on 10 and 11 August 2021 the Claimant asked that the Respondent agree his interpretation of the events which had been dealt with in the Tribunal liability judgment. He described his interpretation of these events as "impermissible contradictory perjury-concealing findings of fact in the liability judgment".

9. On 11 August the Respondent declined to do so and said that it would not correspond further, as the Claimant's proceedings had been determined by the

Tribunal and were at an end. The Respondent said that the Claimant was left with his numerous appeals to the EAT.

10. The Claimant continued to send correspondence to the Tribunal. He appeared to ask that a different Tribunal reconsider the liability and costs judgments.

11. On 9 September 2021 EJ Brown wrote to the parties in the following terms, " An application for reconsideration is directed to the judge and/or tribunal which made the relevant decision. Save for the Claimant's wasted costs application, all his applications have now been considered and responded to. No further response will be provided. On the Claimant's wasted costs application, do the parties ask that this is decided on the papers or at a hearing?"

12. On 9 September the Respondent indicated that it was content for the wasted costs application to be dealt with on the papers.

13. On 13 September 2021 the Claimant wrote to the Tribunal saying that he had made reconsideration applications, one of which "provide clear evidence that liability reconsideration is necessary in the interests of justice because the respondent perverted the course of justice via perjury and concealment of adverse documents to obtain the liability judgment and consequent costs judgment."

14. He said that EJ Brown was evading his reconsideration applications and said that a different employment judge should be appointed to the reconsideration process.

15. He said that EJ Brown intended to decide his 3 wasted costs applications, but her letter of 9 August "evaded my 25 March recusal application" by stating that the tribunal's function is complete.

16. The Claimant had sent a series of abusive emails to the Tribunal on 25 March 2021, but had not set out any proper grounds for recusal in them.

17. In his letter of 13 September 2021 he said that it was not in the interests of justice "for an EJ to reverse their position in order to evade a recusal test and then continue making case decisions." He said that EJ Brown had "thus effectively recused herself from deciding these wasted costs applications" and said, "I request that they instead be decided by the judge appointed to the reconsideration process."

18. The Claimant attached a wasted costs application he had made on 22 March 2021, before the liability and costs hearing.

**Relevant Law**

19. By Rules *80 & 82 ET Rules of Procedure 2013*

" **80 When a wasted costs order may be made**

(1) A Tribunal may make a wasted costs order against a representative in favour of any party ('the receiving party') where that party has incurred costs—

(a) as a result of any improper, unreasonable or negligent act or omission on the part of the representative; or

(b) which, in the light of any such act or omission occurring after they were incurred, the Tribunal considers it unreasonable to expect the receiving party to pay.

Costs so incurred are described as 'wasted costs'.

**…**

**82 Procedure**

A wasted costs order may be made by the Tribunal on its own initiative or on the application of any party. A party may apply for a wasted costs order at any stage up to 28 days after the date on which the judgment finally determining the proceedings as against that party was sent to the parties. No such order shall be made unless the representative has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order) in response to the application or proposal. The Tribunal shall inform the representative's client in writing of any proceedings under this rule and of any order made against the representative."

20. Regarding the procedure to be adopted by tribunals when hearing applications for wasted costs, Underhill J said in *Godfrey Morgan Solicitors Ltd v Cobalt Systems Ltd and another* [2012] ICR 305, at para 35(3), that this will depend on the circumstances of the particular case:

" *Procedure* . As the Court of Appeal emphasised in *Ridehalgh* (p 238 b– d and g), the right procedure for determining claims for wasted costs will depend on the circumstances of the particular case. Proportionality is an important consideration. The only essential is that the representative has a reasonable opportunity to make representations as to whether an order should be made. This does *not* necessarily mean a formal two-stage procedure: see *Wilsons Solicitors v Johnson* 9 February 2011, para 29. It may well, however, in a particular case mean that an application for wasted costs cannot be dealt with in the same hearing as that in which the application is made. Tribunals will often understandably wish to deal with such applications there and then, in the interests of economy. I sympathise with that approach: unnecessary hearings on satellite issues are to be avoided wherever possible, and in a straightforward case there will be a lot to be said for striking while the iron is hot. But sometimes that will simply not be fair, and the representative will be entitled to more time to make representations (though not necessarily at a further hearing). …. As the Court of Appeal said in *Ridehalgh* [1994] Ch 205, 238 g, although the procedure must be as simple and summary as possible, that can only be so far as fairness permits."

**Discussion and Decision**

21. I decided that it was fair and proportionate for the Claimant's applications for wasted costs orders, dated 10 July and 24 July 2021, to be dealt with on the papers by me, EJ Brown. The Respondent's solicitors, who were the target of the wasted costs applications, had agreed to them being dealt with on the papers.

22. Those wasted costs applications arose out of the costs judgment. I was the judge who had conducted the liability and costs hearing and had, along with the other panel members, made the unanimous liability and costs judgments. I was familiar with the contents of both judgments, as well as the evidence and submissions at the hearing. I was familiar with the procedure adopted at the hearing.

23. It was proportionate and would save costs and time for the parties and the Tribunal for the applications to be dealt with on the papers by the judge who had conducted the liability and costs hearing.

24. The Claimant had referred in his correspondence to a "recusal" application he made on 25 March 2021.

25. The Claimant had, in fact, sent a series of abusive emails to the Tribunal on 25 March 2021, after the liability judgment was given orally at the hearing. He had not set out any proper grounds for recusal in his abusive emails.

26. The Claimant says that I had evaded his 25 March recusal application by stating that the Tribunal's function was complete. He says it is not in the interests of justice "for an EJ to reverse their position in order to evade a recusal test and then continue making case decisions." He said that EJ Brown had "thus effectively recused herself from deciding these wasted costs applications".

27. I disagreed that I would be "reversing" any previous decision on recusal by deciding not to recuse myself from deciding the wasted costs applications.

28. I had previously told the the Claimant that the Tribunal's function was complete on 25 March 2021 because he purported to have made both a reconsideration application and also a recusal application. Reconsideration applications are decided by the judge or Tribunal which made the original decisions. There is no other process. If the Claimant wishes another judge to review the Tribunal's liability and costs judgments, he has the choice to appeal.

29. The Claimant's purported application for recusal on 25 March 2021 was therefore inconsistent with his application for reconsideration of judgments which had already been completed by the Tribunal on 25 March 2021. The liability judgment was given orally on 25 March 2021. The costs decision was made by the Tribunal in Chambers on 25 March 2021, and sent out in writing to the parties, albeit that it was not promulgated for some time because of pressure of work. Given that the "recusal" application dated 25 March 2021 was made in respect of decisions which had already been completed, it was ineffectual.

30. I considered that there were no grounds for me to recuse myself from making this further judgment on the Claimant's wasted costs applications. From his abusive emails, the Claimant was apparently angered by the Tribunal's rejection of his claim. That is not a proper basis for recusal.

31. I rejected the Claimant's applications for wasted costs against the Respondent's solicitors. They rely on an interpretation of the facts of the claim which the Tribunal

rejected in its liability judgment. The applications also rely on a disputed chronology of the correspondence between the parties during the proceedings. The parties' contentions in their correspondence and at hearings have already been considered and have resulted in liability and costs judgments, against the Claimant, which have not been overturned on appeal. The Tribunal has not accepted the Claimant's characterisation of the facts of the case, or of the conduct of the Respondents, or of their solicitors.

32. There is nothing in the Tribunal's judgments which supports the Claimant's applications for wasted costs. It was quite clear to me that the Claimant's applications for wasted costs were a collateral challenge to the Tribunal's liability and costs judgments.

33. The Claimant's correct course, if he wishes to challenge those judgments, is to pursue any appeals. If he is successful in those, on any grounds relevant to a wasted costs application, he might then pursue such an application. There are no grounds for making a wasted costs order at present.

34. The Claiamnt's wasted costs application dated 22 March 2021 will be dealt with separately, as it predated the liability and costs hearing and related to matters which had been dealt with by different judges at previous hearings. A decision will be made as to which judge will determine that application.

____ _2 November 2021__
**Employment Judge Brown**

Sent to the parties on:

02/11/2021.

For the Tribunal: