# EMPLOYMENT TRIBUNALS

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| **Claimant:** | **Ms D Forth** |
| **Respondent:** | **Unitel Direct Ltd** |
| **Heard at:** | **Newcastle Employment Tribunal (dealt with on papers)** |
| **On:** | **25th November 2021** |
| **Before:** | **Employment Judge Sweeney**<br>**Lynn Jackson**<br>**Russell Greig** |

# JUDGMENT ON COSTS

The unanimous Judgment of the Tribunal is as follows:

1. **The Respondent's application for costs is refused**

# REASONS

**Background and findings**

2. By a Claim Form presented on **06 February 2020**, the Claimant brought a complaint of automatically unfair dismissal (in contravention of section 103A Employment Rights Act 1996 ('ERA')) and complaints of detriment under sections 48 and 47B ERA.

3. The Final Hearing took place on **12th – 15th July and 6th – 8th September 2021**. Oral judgment with reasons was given to the parties at the end of the hearing. A written record of the judgment was sent to the parties on **15 September 2021**.

4. On **06 October 2021,** the Respondent submitted a written costs application under rule 76 of the ET Rules of Procedure. The Claimant responded to the application on **12 October 2021**. The Respondent sent further written submissions on **19 October 202,** and then made some additional points in an email of **25 October 2021**. Both parties invited the Tribunal to

determine the application without a hearing. The Claimant was directed to send to the Respondent and to the Tribunal a statement setting out her income, capital, savings, outgoings and debts, which she did.

**The grounds for the application**

5. The Costs Application of **06 October 2021** was made on grounds that 'the Claimant acted unreasonably in pursuing her claim which had little or no reasonable prospect of success'.

6. On **22 January 2020**¸ the Claimant presented a Claim Form to the Employment Tribunal. A Response was returned on **04 March 2020**. There was a telephone preliminary hearing before Employment Judge Morris on **03 April 2020**, which the Claimant did not attend for reasons which were set out by Judge Morris in his case management summary. There was then a further preliminary hearing before Employment Judge Sweeney on **17 June 2020.** There was then a further preliminary hearing before Judge Sweeney on **26 October 2020**.

7. On **13 May 2020**, the Respondent sent to the Claimant a 'without prejudice save as to costs' letter. That letter was attached to the coast application of **06 October 2021** as 'attachment 1' (referred to as a 'Costs Warning Letter' or 'CWL'). The Respondent raised several issues in that CWL, the key ones being:

   7.1. The Claimant's failure to respond to Judge Morris's direction of **03 April 2020** that, by **01 May 2020**, she send evidence to support her contention that she commenced employment on **15 January 2017**.

   7.2. The Claimant's failure to alert the Respondent or the Tribunal until **02 April 2021** to the fact that she was unable to attend the hearing of **03 April 2021**, despite being in possession of a fit note which commenced **15 December 2019** and expired on **07 April 2019.** It was suggested in the letter that she had deliberately failed to disclose the sick note to put the Respondent to the costs of preparing for the preliminary hearing.

   7.3. On **07 May 2020**, the Claimant sent an email to the Tribunal and to the Respondent saying '*I made my first disclosure to Tracy Lawrence on **23 October 2018**.* The Respondent observed that *'this allegation was not included in your original claim form'.* The Respondent also referred to having been put to additional time in preparing applications to the tribunal for further information or documentation and it put the Claimant on notice that *'this may be out of time*'.

   7.4. On **13 May 2020**, the Claimant applied to postpone the preliminary hearing listed for **17 June 2020** for an 'unsubstantiated and unreasonable reason'.

   7.5. That the Claimant is a 'serial litigant' and that she was pursuing this complaint as an abuse of the Tribunal system;

   7.6. That the Respondent may make an application for costs, and that she was recommended to seek independent legal advice on the merits;

7.7. That the Respondent was prepared not to pursue a costs order if she withdraws her claim. If not, the Respondent reserved its right to refer the letter to the Tribunal in support of any application for costs.

8. On **17 February 2021**, the Respondent sent a further CWL to the Claimant. This was attached to the Costs Application as 'attachment 2'. The Respondent's solicitors recommended she take legal advice. The Respondent first of all addressed the complaint of detriment under section 48, stating that, on a review of the documents she had disclosed in readiness for drafting witness statements and alongside the Respondent's response, 'they do not show any act or deliberate failure to act on the Respondent's behalf to your alleged disclosures'. The Respondent then set out its reasons for expressing this opinion, identifying among, other things, the following key points:

8.1. That if there was an increase in workload and/or managerial tasks it could not see how these were given to her because she had made a protected disclosure;

8.2. That in respect of the appointment of a trainee/apprentice, she was given full autonomy to appoint one and that there were emails showing that it was the College which decided an apprentice or trainee to be inappropriate at the time, not the Respondent;

8.3. That she would not be able to show any detriment to her;

9. Insofar as concerned the complaint of constructive unfair dismissal (in contravention of section 103A), the Respondent observed that the Claimant carried the burden of establishing a repudiatory breach. It observed that she had raised no grievance and had not produced any evidence to show that she had asked the Respondent for support; that she had complained on multiple occasions about the customer services/debt recovery processes which she was hired to investigate and monitor but did not ask for support in remedying those complaints or otherwise. It referred to her salary increase of £3,000 and that she had resigned in response to perceived criticism of her reporting.

10. The Respondent also observed that the Claimant had started new permanent employment on **15 November 2019** on a salary of **£37,000** which was double her salary with the Respondent and that any losses following her resignation from that employment were not attributable to any action of the Respondent. It raised the prospect of a reduction in compensation (should she succeed) for failure to raise a grievance and for lack of good faith in making disclosures. The Respondent said that the Respondent would not pursue a costs order if she withdrew within seven days.

11. The Claimant did not withdraw and she emailed the Respondent to say that, within a couple of hours of receiving the letter.

12. In the Costs Application, the Respondent acknowledges that the Claimant is a litigant in person. However, it observes that, by her own admission, she has ample legal experience, having conducted court proceedings during her time with the Respondent as a credit controller/debt recovery manager and that she is CILEX qualified. The Respondent submits that she has at least some familiarity with basic legal principles and understands how to conduct legal proceedings.

13. The Respondent submitted that the Claimant adopted a scattergun approach and that her position changed throughout the proceedings.

14. The Respondent relies on some findings of the Tribunal, which were provided orally. In particular, it refers to the Tribunal's conclusion that in respect of a number of alleged disclosures there was no evidence at all and to some of the tribunal's findings and observations during the hearing:

    14.1. That the Claimant's allegation that Ms Lawrence deliberately recruited Chantelle to cause the Claimant more stress when they could have recruited another more suitable member of staff, Jean. C went as far as saying that TL knew in advance that C would be 'useless' was rejected as a wild, baseless accusation.

    14.2. That the Claimant came nowhere near satisfying the Tribunal that Ms Lawrence was seeking to manager her out of the business by increasing her workload knowingly and deliberately and failing to reduce her workload;

    14.3. That the Claimant had to be reminded that this was not a 'stress at work' complaint;

15. In its additional submissions of **19 October 2021**, the Respondent referred to the case of **Opalkova v Acquire Care Ltd** [2021] 8 WLUK 265, EAT. It drew attention to some of the points it had made in the CWLs. It emphasized that the Claimant understood basic legal principles and was free to seek and was encouraged to seek legal advice. It submitted that the Claimant should have known that her claims had no reasonable prospect of success.

16. The Respondent referred to instances of what it described as the Claimant's unreasonable conduct.

    16.1. She did not plead her case early or in detail despite being afforded numerous opportunities;

    16.2. Despite clear explanations and requests for information, the Claimant did not provide fully the information required, resulting in a further preliminary hearing on 26 October 2020;

    16.3. There was no evidence of Tracy Lawrence's behavior being linked to any protected disclosure;

    16.4. The Claimant attempted to add new matters throughout the proceedings;

    16.5. At the final hearing, the Claimant introduced the concept of Chantelle Lane being appointed to make her working life difficult, a brand new allegation, introduced on a compete whim;

    16.6. The Claimant failed to engage in any meaningful way as an attempt to avoid costs and refused to seek legal advice;

16.7. The manner in which the Claimant pursued her claims was unreasonable, unfocused and extensive;

17. The Respondent referred to a number of cases in its submissions, all of which we have considered.

**Relevant law**

18. The tribunal's power to award costs is contained in the 2013 Tribunal Rules of Procedure and in particular within rules 75 to 84.

19. Under rule 76 (1) "a tribunal may make a costs order… And shall consider whether to do so where it considers that-

> (a) a party (…) Has acted vexatiously, abusively, disruptively or otherwise reasonably either bringing of the proceedings (or part) for the way that the proceedings (or part) has been conducted;

20. It is well established that 76 (1) imposes a two-stage test: first of all the tribunal must ask itself whether the party's conduct falls within the grounds identified in rule 76 (1) ("the threshold" stage). Secondly, and if it does, the tribunal must ask itself whether it is appropriate to exercise its discretion in favour of awarding costs against that party (the 'discretion' stage).

21. In the decision of **Yerrakalva v Barnsley Metropolitan Council** [2012] I.C.R.420, the Court of Appeal emphasised that it was important not to lose sight of the totality of the circumstances. The tribunal must look at the whole picture when exercising the discretion to award costs or not. It must ask whether there has been unreasonable conduct in the bringing, defending or conducting the proceedings or part thereof and, in doing so, identify the conduct, what was unreasonable about it and what was its effect. Reasonableness is a matter of fact for the tribunal which requires an exercise of judgement.

22. In **Radia v Jefferies International** [2020] IRLR 431, HHJ Auerbach considered the overlap between a claim or response having no reasonable prospect of success ([R76(1)(b)] and unreasonable conduct [R76(1)(a)]. In paragraph 64, he said:

> *"This means that, in practice, where costs are sought both through the r76(1)(a) and the r76(1)(b) route, and the conduct said to be unreasonable under (a) is the bringing, or continuation, of claims which had no reasonable prospect of success, the key issues for overall consideration by the Tribunal will, in either case, likely be the same (though there may be other considerations, of course, in particular at the second stage). Did the complaints, in fact, have no reasonable prospect of success? If so, did the complainant in fact know or appreciate that? If not, ought they, reasonably, to have known or appreciated that?"*

23. The case of **Opalkova v Acquire Ltd** was concerned with a preparation time order which was sought on the grounds that the Response to some of the Claimant's claims had no reasonable prospects of success. The principles distilled from that case apply where the question is whether to award costs in circumstances where it is said that the Claim had no reasonable prospect of success. Referring back to **Radia**, the EAT (HHJ James Tayler) held that there are three key questions to be asked when considering a claimant's claims:

    23.1. Objectively analysed, when the Claim was presented did it have no reasonable prospect of success, or alternatively at some later stage as more evidence became available, was a stage reached at which the Claim ceased to have reasonable prospects of success?

    23.2. At the stage that the Claim had no reasonable prospect of success, did the Claimant know that that was the case?

    23.3. If not, should the Claimant have known that the claim had no reasonable prospect of success?

24. HHJ Tayler went on to say in paragraph 24 that those questions are relevant, whether the matter is analysed on the basis that the Claim had no reasonable prospect of success or that the Claimant was guilty of unreasonable conduct in bringing the proceedings. The question of whether a claim had reasonable prospects of success is objective and is the threshold for making a costs order under rule 76(1)(b), even if the Claimant was not aware, and should not reasonably have been aware, that the claim had no reasonable prospect of success. However, the lack of understanding of the merits of the claim would be relevant, along with other matters, to the discretionary question of whether a costs order should be made. The questions of whether the Claimant knew that the claim had no reasonable prospect of success, or should reasonably have known, are relevant to the threshold question for a costs order on the basis that pursuing the claim was unreasonable conduct under rule 76(1)(a); after which the discretion to make an order has to be applied considering all relevant factors.

25. In considering whether a claimant should have known that a claim had no reasonable prospects of success, the legally represented claimant is likely to be assessed more rigorously than the unpresented.

26. In **AQ Ltd v Holden** [2012] IRLR. 648, HHJ Richardson QC held at paras 32 and 33:

    *"The threshold tests in rule 40(3) [the predecessor provision under the 2004 ET Rules] are the same whether a litigant is or is not professionally represented. The application of those tests, however, must take into account whether a litigant is professionally represented. A tribunal cannot and should not judge a litigant in person by the standards of a professional representative. Lay people are entitled to represent themselves in tribunals; and, since legal aid is not available and they will not usually recover costs if they are successful, it is inevitable that many lay people will represent themselves. Justice requires that tribunals do*

*not apply professional standards to lay people, who may be involved in legal proceedings for the only time in their life…. Lay people are likely to lack the objectivity and knowledge of law and practice brought by a professional legal adviser. Tribunals must bear this in mind when assessing the threshold tests…Further, even if the threshold tests for an order for costs are met, the Tribunal has discretion whether to make an order. This discretion will be exercised having regard to all the circumstances. It is not irrelevant that a lay person may have brought proceedings with little or no access to specialist help and advice.*

*This is not to say that lay people are immune from orders for costs: far from it, as the cases make clear. Some litigants in person are found to have behaved vexatiously or unreasonably even when proper allowance is made for their inexperience and lack of objectivity. But the Tribunal was entitled to take into account that Mr Holden represented himself…"*

27. There is no rule of law that the discretion to award costs may only be exercised where deliberately dishonest conduct is shown, although if there is such conduct then a costs order may be more likely….The test is not whether there was dishonest conduct but whether there was unreasonable conduct in bringing proceedings. The test of reasonableness is an objective one which will encompass a wide range of matters, one of which would be deliberately dishonest conduct, but which might also include an unreasonably distorted perception of matters. It is for the Tribunal to judge whether that perception was unreasonable in the circumstances and such that the discretion to award costs should be exercised: **Brooks v Nottingham University Hospitals NHS Trust**, per Choudhury P @ para 47.

28. It is not wrong in principle to make a costs order against a claimant even though no deposit order had been made. Respondents faced with what they believed to be weak claims do not always seek deposit orders….The failure to seek an order is not necessarily a recognition of the arguability of the claim. Further, the fact that the claim depended on issues of fact about the motivation of individual respondents or other employees did not automatically mean that it was reasonable for a claimant to believe that she had a good chance of success. It depends on the facts and the allegations in the particular case. If a tribunal finds that there is no evidence to support the interpretation put forward by the claimant on the acts of which she complained, all of which had in fact more obvious innocent explanations, to assert that the claims are 'fact-sensitive' is nothing to the point. Nor does it make any difference that some questions are only finally resolved as a result of the evidence at the hearing. That will generally be the case but it does not mean that a reliable assessment of the prospects of success could not have been made at an earlier stage. It is not the law that the issue of whether a claim is misconceived depends onwhether the claimant genuinely believed in it.: **Vaughan v London Borough of Lewisham** [2013] IRLR 713, EAT @ para 14

29. The existence of a costs warning is a relevant factor when considering whether to exercise a discretion to award costs. The absence of such a warning does not, however, preclude

the making of an order: **Brooks v Nottingham University Hospitals NHS Trust** [2019] UKEAT/0246/18/JOJ @ para 51.

**Means**

30. Rule 84 of the ET Rules expressly confers on the Tribunal a discretion to have regard to the paying party's means. It is not obliged to do so.

31. In the case of **Vaughan v London Borough of Lewisham** [2013] IRLR 713, EAT, Underhill J (as he then was) stated in paragraph 28:

*"The starting-point is that even though the Tribunal thought it right to 'have regard to' the Appellant's means that did not require it to make a firm finding as to the maximum that it believed sh3e could pay, either forthwith or within some specified timescale, and to limit the award to that amount. ….If there was a realistic prospect that the Appellant might at some point in the future be able to afford to pay a substantial amount it was legitimate to make a costs order in that amount so that the Respondents would be able to make some recovery when and if that occurred. That seems to us right in principle: there is no reason why the question of affordability has to be decided once and for all by reference to the party's means as at the moment the order falls to be made."*

32. Therefore, there is no requirement to come to a concluded view that a claimant has funds at his or her immediate disposal so as to be able to pay forthwith or within some specified timescale the full amount which might be assessed in due course.

**Submissions**

33. As indicated, both the Respondent and the Claimant provided written submissions. We have read all of the submissions and associated emails. We do not propose to set those out in these reasons. These reasons are proportionate to the issues raised in the application.

**Discussion and Conclusion**

34. The first question we have had to ask ourselves is whether the Claimant's conduct met the required threshold: namely, did she act unreasonably in pursuing a claim or claims which had little or no reasonable prospect of success. In particular, did she act unreasonably following the CWLs sent by the Respondent's solicitors, much as the claimant in the case of **Growcott v Glaze Autoparts Ltd** UKEAT/0419/11.

35. We have considered this in two parts:

35.1. Did the Claimant act unreasonably in the way she conducted the proceedings (i.e. without regard to the Respondent's contention that the unreasonable conduct was the pursuit of a hopeless claim)?

35.2. Did the Claimant act unreasonably in presenting and/or continuing a claim which

had no reasonable prospect of success?

36. As regards the first question, we first deal with some of the more specific points raised by the Respondent:

36.1. The Respondent had agreed to extend time for the Claimant to do this until 11 May 2021, but in the end it was unnecessary as she agreed her start date to be 15 January 2018 as stated by the Respondent and said she had made an error;

36.2. The Claimant's failure to attend the preliminary hearing on 03 April 2021 was addressed at the subsequent preliminary hearing and her reason was found to be acceptable. Just because she was in possession of a fit note does not mean that she knew for sure she would be unable to attend. She may well have thought she was going to be fit enough but in the end turned out not to be. Frustrating as it is that the Claimant did not inform the Tribunal and the Respondent of this earlier, it is no more than that. There is certainly no evidence of deliberately seeking to put the Respondent to unnecessary cost and there is nothing at all from which we could properly infer such an intention. The Respondent could have but did not request a hearing in respect of this costs application at which it could have put such matters to her. We do not agree that the last minute notification by the Claimant of her inability to attend the hearing should be categorized, in the circumstances as unreasonable conduct by the Claimant. She was unfit to attend and she did let the Tribunal know. She could have let the Tribunal know earlier but there is no evidence that she had always proceeded on the basis that she would not be able to attend;

36.3. As regards the point made in paragraph 7.3 above, this is a minor issue regarding the identification of alleged disclosures. There was a preliminary hearing in due course at which, as is normal, directions were made for disclosure. This was nothing out of the ordinary.

36.4. Regarding the Respondent's submissions about the attempted postponement of the preliminary hearing, the content of the Claimant's email requesting a postponement of the hearing of **17 June 2021**, clearly implies that she did not understand what was to happen at that hearing. She thought she had to obtain all her evidence. It is hardly unreasonable to request a postponement, especially well in advance of the hearing as this was. It is also not unusual in litigation for postponement requests to be made. The Respondent objected to the postponement and the hearing went ahead.

36.5. The Respondent submits that the Claimant has some basic familiarity with legal processes. However, this point should not be overstated. There is no suggestion that the Claimant had an appreciation of employment tribunal procedures or employment law, especially in relation to the law relating to whistleblowing.

36.6. We do not consider the pleading of the case in a general way to be unreasonable behavior. It is not uncommon for litigants in person to do this and for matters to be

clarified at one or more preliminary hearings, or even at a final hearing. The Respondent had sufficient knowledge and understanding after the preliminary hearings. There is nothing unreasonable in the way the Claimant conducted the proceedings in this respect.

36.7. We do not agree that is necessarily unreasonable conduct of proceedings to seek to expand on certain aspects of the complaint. It all depends on the circumstances. In this case, criticism is made of the Claimant limiting and then expanding on the number of alleged disclosures and the detriments. It is right that the Claimant did seek to narrow the issues but then expanded matters by identifying more disclosures. Again, we do not consider that in itself to be unreasonable conduct of the Claimant, given she was representing herself throughout. At no point did the Tribunal consider this was part of some attempt to make life difficult for the Respondent in the management of the proceedings. It did make the proceedings a little more challenging but in the great scheme of things not unreasonably so.

36.8. As to the submission that the Claimant was a serial litigant, there is no evidence of this.

36.9. As to the points made by the Respondent in its letter of **17 February 2021** (paragraph 8 above), it is right that the Claimant lost on all of these things. However, they had to be determined on the evidence. Taking her case at its highest, at earlier stages in the proceedings, even after disclosure, meant that until the evidence was considered, it could not be said that the complaint had no reasonable prospect of success.

36.10. The Claimant's inability to articulate the complaint at an early stage or to apply focus is not something which we consider to be unreasonable conduct on her part Regarding the complaint that she did not plead her case early or in detail despite being afforded numerous opportunities, the Respondent confirmed at a case management hearing that it had sufficient understanding of the case it had to meet.

36.11. We do not feel that the failure to seek legal advice is, of itself, unreasonable conduct of the proceedings. Employment tribunals are there for represented and unrepresented parties alike. Even in cases where people have a reasonable income, they are often deterred by the legal costs of involving solicitors and barristers. We shall return to this issue when we address the Respondent's argument that the Claimant behaved unreasonably in pursuing a case which had no reasonable prospect of success, and where we considered the Claimant's decision not to take legal advice in that context.

36.12. Where we do agree with the Respondent is in relation to the way in which the Claimant raised the complaint regarding Chantelle. This was, we consider, unreasonable conduct. Whilst the Tribunal gave her permission to do so on the basis that the Respondent was able to address the issue, that does not mean that her conduct in raising it at such a very late stage was reasonable. The Claimant had plenty of time

to think about and put her case. We allowed her latitude as a litigant in person and do not consider it unreasonable conduct in the proceedings for her to have taken some time to eventually settle on the 11 alleged protected disclosures set out in the bundle at page 137. We agree with the respondent that it took some effort to get to that point, but this was dealt with by normal case management which was not out of the ordinary in litigation pursued by a litigant in person. However, the issue regarding Chantelle was in a different category and we feel meets the threshold of unreasonable conduct. There was not a hint of this being an issue until the hearing itself.

37. Therefore, is one distinct respect in which we conclude the Claimant acted unreasonably in the way in which she conducted the proceedings and that is the introduction of the issue regarding Chantelle.

38. We must emphasise that we did not consider each of the Respondent's points in isolation. Inevitably we looked at each point separately but then stepped back to consider the Claimant's overall conduct of the proceedings. In doing so, whist we could recognise the frustrations expressed by the Respondent's legal representatives, we concluded that only one particular aspect amounted to unreasonable conduct in the proceedings.

**Did the Claimant behave unreasonably in pursuing a complaint which had no reasonable prospect of success?**

39. We agree with the Respondent that the Claimant's complaint that Tracy Lawrence was forcing her out of the business or subjected her to detriments because she made disclosures was unreasonable. There was no evidence of Tracy Lawrence's behavior being linked to any protected disclosure. Therefore, to that extent we agree with the Respondent. There was also no objective evidence that Tracy Lawrence had subjected the Claimant to any detriment or behaved unreasonably towards her. It was, we considered, unreasonable of the Claimant to believe that there was. Her belief was genuine but it was without doubt wholly unreasonable.

40. We also conclude that her belief that she had made protected disclosures, save for one, was unreasonable.

41. We are clear that the Claimant's complaints had no reasonable prospect of success but only after hearing the evidence. We cannot conclude that they had no reasonable prospect of success at the date of the Claim Form, or at the date of the further particulars or following disclosure. However, objectively analysed, it could be said that upon exchange of witness statements it was clear that the complaints had no reasonable prospect. The next question then was whether the Claimant should have known that. In considering that aspect, we again considered the Respondent's suggestion to her to seek legal advice and the Claimant's failure to do so. That is a much more difficult aspect.

42. We consider that she should have known this and that her failure to heed the earlier exhortations of the Respondent's solicitors to seek at least some legal advice was unreasonable.

43. On the above analysis then, the Claimant's conduct meets the threshold in that after exchange of witness statements she acted unreasonably in pursuing her complaints which had no reasonable prospect of success (and in the way in which she conducted the proceedings by introducing the 'Chantelle' issue very late in the day).

**Discretion**

44. In as much as the Claimant's pursuit of the complaints was unreasonable, not every aspect of her case was unreasonable. She did make one protected disclosure, which was denied by the Respondent. She had a genuine grievance about being paid significantly less than a more recent recruit. We emphasise that the way in which the Claimant went about complaining of the latter issue was unreasonable. Nevertheless, she saw that as being connected to her experiences with the Respondent. We were clear in our minds that the Claimant genuinely believed in the things she claimed against the Respondent in these proceedings and that she did not genuinely know that her claims had no reasonable prospect of success. The issue regarding Chantelle did not add much time to the proceedings and the Respondent was easily able to deal with the issue during the time allocated.

45. We bear in mind that the Claimant had experienced significant anxiety issues and that she had been struggling with facial pain and issues with her mental health, as she described during the hearing and which she had raised during case management hearings. We bear in mind that Ms Lawrence, in her evidence to the Tribunal, recollected the Claimant being very poorly, in pain and suffering with menopausal symptoms. In the Claimant's closing submissions to the Tribunal she referred again to her mental health and to her lack of knowledge of the law and employment tribunal procedures and that she had been sick for some time but tried her best.

46. All in all, whilst we understand the Respondent's frustrations, in the end, taking account of the matters above, we decided to exercise our discretion against making an order for costs in this case. We would add, however, a close-run thing. The Claimant's case was very poor but we are satisfied that she believed otherwise, or at the very least, did not believe it was one which had no reasonable prospect of success. We are also satisfied that she was genuinely not in a good place mentally. That should come as no surprise to the Respondent, for it seems that it was clear, certainly, to Ms Lawrence before the Claimant resigned her employment. It was and is a sad feature of this case that the Claimant could not see that Ms Lawrence was not against her, nor Mr Wilkinson nor Mr Sandwith. In the time after her resignation we feel that her health played a part in how she saw things – or her inability to see things for what they were. By the time the parties got to exchange of witness statements, the Claimant was just not able to see it for how it was. It took a hearing on the merits for her to be told the findings of an independent tribunal. Unreasonable her complaints may have

been, for the reasons given above, we do not consider it appropriate to exercise our discretion to order costs against her.

Employment Judge Sweeney

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Date: 29 November 2021