EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Miss Sarah Louise Luck	AND	Hanson Quarry Products Europe Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD REMOTELY by CVP **ON** 14 April 2022

EMPLOYMENT JUDGE N J Roper **MEMBERS** Ms R Hewitt-Gray
Ms E Smillie

Representation

For the Claimant: Written Representations
For the Respondent: Written Representations

ORDER

The claimant is ordered to pay the respondent's costs in an amount subject to detailed assessment pursuant to Rule 78(1)(b).

REASONS

1. In this case the respondent seeks its costs of defending this action against the claimant. The respondent has made a detailed application by letter dated 23 November 2020, supported by further submissions dated 4 April 2022. The claimant has responded to the original application in a detailed letter from her then solicitors dated 25 January 2022. The parties have both consented to the application being determined remotely on the papers before us. We have considered in detail these representations and submissions, and the supporting documents to which we were referred.
2. General Background
3. By a claim form presented on 20 August 2018 the claimant brought complaints of discrimination on the grounds of her sex (being direct and indirect discrimination, harassment and victimisation); for detriment arising from protected public interest disclosures; and for detriment arising from her role as a trade union representative of workers in health and safety matters. The proceedings were initially brought against both the above respondent and Mr Darren Plant, although the claimant subsequently withdrew her claims against Mr Plant personally.

4. The original claim as presented raised 19 factual allegations of alleged sexual harassment from April 2015; 37 allegations of direct sex discrimination from April 2015; 14 alleged protected acts from May 2016 giving rise to 49 allegations of victimisation from August 2016; seven alleged protected public interest disclosures from May 2017 giving rise to 24 alleged detriments from January 2018; and 21 allegations of detriment arising from trade union activities from April 2018. The claim was later amended with the result that it ultimately included claims of unfair dismissal; direct sex discrimination; harassment related to sex; victimisation; detriment because of trade union and/or health and safety related matters; and for unlawful deduction from wages. The last claim relating to wages was withdrawn at the commencement of the full main hearing.
5. A number of these allegations were arguably out of time and at a case management hearing on 4 October 2019 the claimant agreed that she would select her strongest seven allegations. These would then proceed to be determined at a full main hearing, with the remaining allegations stayed until further notice. These were referred to as the claimant's Chosen Allegations.
6. The Chosen Allegations were then determined at a full main hearing for five days from 5 October 2020. The Chosen Allegations were all dismissed by the Reserved Judgment of this Tribunal dated 16 October 2020, and it was sent to the parties on 30 October 2020. This is referred to in this judgment as the Reserved Judgment, and it should be read in conjunction with this judgment. The Reserved Judgment was unanimous.
7. The claimant appealed against the Reserved Judgment which was rejected by the Employment Appeal Tribunal at the sift stage. The claimant proceeded with her appeal, but it was rejected following a hearing under Rule 3(10). The claimant was legally represented throughout these proceedings.
8. The Application for Costs
9. The respondent makes an application for its costs on the following grounds: (i) Under Rule 76(1) the claimant has acted vexatiously and/or otherwise unreasonably in bringing the proceedings, and in the way in which the proceedings have been conducted; and (ii) Under Rule 76(2) the claimant acted in breach of the tribunal's case management orders with the result that the respondent incurred additional and unnecessary expense, and both the respondent's and the Tribunal's time was wasted.
10. The claimant resists the application.
11. The Rules
12. The relevant rules are the Employment Tribunals Rules of Procedure 2013 ("the Rules").
13. Rule 76(1) provides: "a Tribunal may make a costs order or a preparation time 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.
14. Under Rule 76(2) a Tribunal may also make such an order where a party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of a party.
15. Under Rule 77 a party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties. No such order may be made unless the paying party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order) in response to the application.
16. Under Rule 78(1) 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; (b) order the paying party to pay the receiving party the whole or a specified part of the costs of the receiving party, with the amount to be paid being determined, in England and Wales, by way of detailed assessment carried out either by a county court in accordance with the Civil Procedure Rules 1998, or by an Employment Judge applying the same principles …"

17. Under Rule 84, 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.
18. The Relevant Case Law
19. We have considered the following cases: Gee v Shell Ltd [2003] [2003] IRLR 82 CA; McPherson v BNP Paribas [2004] ICR 1398 CA; Monaghan v Close Thornton [2002] EAT/0003/01; Brooks v Nottingham University Hospitals NHS Trust [2019] WLUK 271, UKEAT/0246/18; NPower Yorkshire Ltd v Daley EAT/0842/04; Arrowsmith v Nottingham Trent University [2011] ICR 159 CA; AQ Ltd v Holden [2012] IRLR 648 EAT Kapoor v Governing Body of Barnhill Community High School UKEAT/0352/13; Nicholson Highland Wear v Nicholson [2010]IRLR 859; Barnsley BC v Yerrakalva [2012] IRLR 78 CA; Topic v Hollyland Pitta Bakery & Ors UKEAT/0523/11/MAA; Kovacs v Queen Mary and Westfield College [2002] IRLR 414 CA; Shield Automotive Ltd v Greig UKEATS/0024/10; Jilley v Birmingham and Solihull Mental Health NHS Trust [2008] UKEAT/0584/06; Single Homeless Project v Abu [2013] UKEAT/0519/12; Vaughan v LB of Newham [2013] IRLR 713; Raggett v John Lewis plc [2012] IRLR 906 EAT; Ladak v DRC Locums Ltd [2014] IRLR 851 EAT.
20. The Relevant Legal Principles
21. The correct starting position is that an award of costs is the exception rather than the rule. As Sedley LJ stated at para 35 of his judgment in Gee v Shell Ltd "It is nevertheless a very important feature of the employment jurisdiction that it is designed to be accessible to people without the need of lawyers, and that in sharp distinction from ordinary litigation in the UK, losing does not ordinarily mean paying the other side's costs …" Nonetheless, an Employment Tribunal must consider, after the claims were brought, whether they were properly pursued, see for instance NPower Yorkshire Ltd v Daley. If not, then that may amount to unreasonable conduct. In addition, the Employment Tribunal has a wide discretion where an application for costs is made under Rule 76(1)(a). As per Mummery LJ at para 41 in Barnsley BC v Yerrakalva "The vital point in exercising the discretion to order costs is to look at the whole picture of what happened in the case and to ask whether there has been unreasonable conduct by the claimant in bringing and conducting the case and, in doing so, to identify the conduct, what was unreasonable about it, and what effects it had." However, the Tribunal should look at the matter in the round rather than dissecting various parts of the claim and the costs application, and then compartmentalising it. There is no need for the tribunal to find a causative link between the costs incurred by the party making the application for costs and the event or events that are found to be unreasonable, see McPherson v BNP Paribas, and also Kapoor v Governing Body of Barnhill Community High School in which Singh J held that the receiving party does not have to prove that any specific unreasonable conduct by the paying party caused any particular costs to be incurred.
22. When considering an application for costs the Tribunal should have regard to the two-stage process outlined in Monaghan v Close Thornton by Lindsay J at paragraph 22: "Is the cost threshold triggered, e.g. was the conduct of the party against whom costs is sought unreasonable? And if so, ought the Tribunal to exercise its discretion in favour of the receiving party, having regard to all the circumstances?"
23. In Brooks v Nottingham University Hospitals NHS Trust the EAT confirmed that dealing with an application for costs requires a two-stage process. The first is whether in all the circumstances the claimant has conducted the proceedings unreasonably. If so, the second stage is to ask whether the tribunal should exercise its discretion in favour of the claiming party, having regard to all the circumstances. In the case of reasonable prospects of success, the first stage is whether that ground is made out, and if it is, then to apply the exercise of discretion as to whether or not to award costs. When exercising that discretion at the second stage a tribunal can take account of reliance upon positive legal advice which had been received by the unsuccessful claimant, but positive professional advice will not necessarily insulate a claimant against a costs award. In the absence of any evidence as to the actual advice given, and the basis on which that advice was provided, it would be reasonable for a tribunal to assume that a legally represented claimant has been properly

advised as to the risks and weaknesses of his or her case, and of the potential for an adverse costs order. Where privilege has been waived, such evidence would ordinarily need to explain the instructions given, the context in which the advice was provided, and the evidence considered.

24. The threshold to trigger costs is the same whether a litigant is or is not professionally represented, although in applying those tests, the EAT has held that the status of a litigant is a matter which the tribunal must take into account – see AQ Ltd v Holden in which Richardson J commented: "Justice requires the tribunals do not apply professional standards to lay people, who may be involved in legal proceedings for the only time in their life. As [counsel] submitted, lay people are likely to lack the objectivity and knowledge of law and practice brought about by a professional adviser. Tribunals must bear this in mind when assessing the threshold tests in [rule 76(1)(a)]. Further, even if the threshold tests for an order of 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." However, Richardson J also acknowledged that it does not follow from this "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". These statements were approved by Underhill P in Vaughan v London Borough of Newham.
25. With regard to costs warning letters, while it is good practice to warn a claimant of the weakness of his or her case where the respondents may be minded to apply for costs should they succeed at the end of the case, the failure to do so will not, as a matter of law, render it unjust to make a costs order even against an unrepresented claimant. In Vaughan v London Borough of Newham, the EAT upheld a substantial order for costs against the claimant, notwithstanding the absence of a costs warning letter, and in doing so had regard to the likely effect such a letter would have had. Underhill P pointed out that the claimant had never suggested that she would have discontinued her claim if she had received such a letter, and, even if she had, such an assertion would not have been credible. The claimant was "convinced, albeit without any rational or evidential basis, that she was the victim of a conspiracy and of a serious injustice, and it seems to us highly unlikely that a letter from the respondents, however well crafted, would have caused the scales to fall from her eyes."
26. The same approach is to be taken in circumstances where the respondent has not applied for a deposit order. Underhill P in Vaughan also acknowledged that respondents do not always, for understandable practical reasons, seek such an order even where they are faced with weak claims, so that failure to do so "is not necessarily a recognition of the arguability of the claim." On the facts of Vaughan, neither the failure to seek a deposit order nor the failure otherwise to warn the claimant of the hopelessness of her claims was "cogent evidence that those claims had in fact any reasonable prospect of success" and neither failure was "a sufficient reason for withholding an order for costs which was otherwise justified".
27. Where a party has been lying this will not of itself necessarily result in a costs award being made, although it is one factor that needs to be considered. As per Rimer LJ in Arrowsmith v Nottingham Trent University it will always be necessary for the tribunal to examine the context, and to look at the nature, gravity effect of the lie in determining the unreasonableness of the alleged conduct. Nonetheless, to put forward a case in an untruthful way is to act unreasonably, see Kapoor v Governing Body of Barnhill Community High School. The fact that a claimant may not have deliberately lied does not preclude reaching the conclusion that a claim had no reasonable prospect of success or that the claim had not been reasonably brought and pursued, see Topic v Hollyland Pitta Bakery & Ors. In addition, the result of a claim is not necessarily linked to the alleged unreasonable conduct. In Nicholson Highland Wear v Nicholson Lady Smith made it clear that: "a party could have acted unreasonably and an award of [costs] be justified even if there has been a partial (or whole) success. It will depend on the circumstances of the individual case."
28. Ability to Pay:

29. With regard to the paying party's ability to pay, Rule 84 allows the tribunal to have regard to the paying party's ability to pay, but it does not have to, see Jilley v Birmingham and Solihull Mental Health NHS Trust and Single Homeless Project v Abu. The fact that a party's ability to pay is limited, does not, however, require the tribunal to assess a sum that is confined to an amount that he or she could pay see Arrowsmith v Nottingham Trent University which upheld a costs order against a claimant of very limited means and per Rimer LJ "her circumstances may well improve and no doubt she hopes that they will." One reason for not taking means into account is the failure of the paying party to provide sufficient and/or credible evidence of his or her means. The authorities also make it clear that the amount which the paying party might be ordered to pay after assessment does not need to be a sum which he or she could pay outright from savings or current earnings. In Vaughan v LB of Newham the paying party was out of work and had no liquid or capital assets and a costs order was made which was more than twice her gross earnings at the date of dismissal. Underhill P declined to overturn that order on appeal because despite her limited financial circumstances, there was evidence that she would be successful in obtaining some further employment. Per Underhill P: "The question of affordability does not have to be decided once and for all by reference to the party's means at the moment the order falls to be made" and the questions of what a party could realistically pay over a reasonable period "are very open-ended, and we see nothing wrong in principle in the tribunal setting the cap at a level which gives the respondent's the benefit of any doubt, even to a generous extent. It must be recalled that affordability is not, as such, the sole criterion for the exercise of the discretion: accordingly, a nice estimate of what can be afforded is not essential."
30. Insofar as it does have regard to the paying party's ability to pay, the tribunal should have regard to the whole means of that party's ability to pay, see Shield Automotive Ltd v Greig (per Lady Smith obiter). This includes considering capital within a person's means, which will often be represented by property or other investments which are not as flexible as cash, but which should not be ignored.
31. Under Rule 78(1)(a) a costs order may order the paying party to pay the receiving party a specified amount not exceeding £20,000. Under Rule 78(1)(b) a costs order may order the paying party to pay an amount to be determined by way of detailed assessment, carried out either by the County Court or by an Employment Judge applying the principles of the Civil Procedure Rules 1998. Where the receiving party does not regard the limit of £20,000 to be sufficient an order for summary assessment should not be made in those circumstances, see Kovacs v Queen Mary and Westfield College.
32. Recovery of VAT
33. VAT should not be included in a claim for costs if the receiving party is able to recover the VAT, see Raggett v John Lewis plc which reflects the CPR Costs Practice Direction (44PD).
34. The Claimant's Means
35. It is asserted on behalf of the claimant that she is now impecunious, in that she "was homeless for a long period, owns no tangible assets, has no savings, rents a council home for her dependent son, and is in debt". The claimant did not choose to give evidence to substantiate these claims. In any event, the fact that a party's ability to pay is limited, does not, however, require the tribunal to assess a sum that is confined to an amount that he or she could pay see Arrowsmith v Nottingham Trent University, and see the further comments on "affordability" above.
36. The Application and our Findings:
37. We first deal with the claimant's conduct during these proceedings which puts the claims and the claimant's conduct generally in context. We agree with the respondent's assertion that the claimant has consistently and unreasonably failed to comply with various Tribunal directions throughout the conduct of this case. In the first place the claimant agreed to restrict her claims to her seven Chosen Allegations, which was ordered by consent, but then continually sought to expand the scope of her case beyond these Chosen Allegations. Her proposed List of Issues, and the scope of her witness evidence for the full merits hearing, went considerably beyond these agreed Chosen Allegations. Furthermore, the Chosen Allegations were all dismissed and for the reasons explained in the Reserved

Judgment the allegations were found to have been made dishonestly, or otherwise deliberately exaggerated.

38. In addition, the claimant deliberately failed to disclose documents which were in her possession or control and/or to conceal the true nature of those documents contrary to various Tribunal orders, (including that of 13 January 2020). In particular, we have found that the claimant's conduct relating to the transcripts of covert recordings was dishonest.
39. The Tribunal had previously ordered that recordings of meetings could only be relied upon to the extent that a transcript of the recording and the recording itself was made available to the other party, so that the transcript could be checked and then agreed as accurate, and included in the Hearing Bundle, rather than the Tribunal listening to audio evidence.
40. The claimant disclosed two transcripts of meetings which had taken place with the respondent on 5 December 2018 and 4 April 2019. The claimant failed to identify that these transcripts were taken from audio recordings which she had taken covertly, and she also failed to identify that the transcripts included private discussions between the respondent's witnesses which had taken place during breaks in the meetings when those witnesses understood themselves to be alone and speaking in private. The claimant also failed to disclose the audio recordings which were in her possession and control.
41. The true nature of these transcripts only became apparent to the respondent during September 2020, because the claimant had prepared the transcripts in such a way that their true nature was not obvious without a detailed and thorough examination of the content. Accordingly, the respondent requested a copy of the relevant audio recordings on 24 September 2020, 30 September 2020, and again on 1 October 2020. The claimant failed to disclose these recordings, and only did so the day before the full main hearing which commenced on 5 October 2020. It was only at that late stage that the respondent could clearly identify the parts of the transcripts which had been deliberately embellished by the claimant, and that she had omitted to include a conversation between herself and her Trade Union representative which she perceived to be damaging to her case (which was unsurprising giving that he had advised against pursuing it). As we concluded in paragraph 60 of the Reserved Judgment:
42. 60: The claimant subsequently prepared a transcript from her own private recording, and this includes details of a private conversation between the claimant and her union representative Mr O'Keefe during an adjournment. When the claimant subsequently disclosed the transcript for the purposes of these proceedings, she had deliberately omitted the details of the private conversation with Mr O'Keefe which presumably she considered to be damaging to her case. The claimant failed to disclose the recording to the respondent to enable the respondent to check the transcript against it, and to reveal her true actions, until the day before this hearing commenced. Only at this late stage was the respondent on notice of the true nature of the transcript, which demonstrated the claimant's dishonesty, and which now included the conversations between the claimant and Mr O'Keefe.
43. We agree with the respondent's assertion that not only did the claimant fail to comply with the Tribunal's orders relating to disclosure, but this failure was both deliberate and dishonest. The respondent had to incur substantial additional time and cost to reveal the true nature of the transcripts, and it would have been substantially prejudiced if it had failed to do so, and the Tribunal would have been deliberately misled. We confirmed as much in paragraph 103 of the Reserved Judgment:
44. 103: … the claimant covertly recorded the two hearings on 5 December 2018 and 4 April 2019. We find that the claimant's conduct both in doing so, and also in the manner in which she sought rely on the resulting transcripts, was dishonest. The claimant failed to declare that the meetings were being covertly recorded, and this resulted in recordings of private discussions during adjournments. She produced a transcript of her recording of the first meeting on 5 December 2018 which was embellished in that she had completed otherwise inaudible sections of the private sessions. Her conduct in recording the meeting on 4 April 2019 was blatantly dishonest given that she sought clarification that the respondent was not recording the meeting, and then asked to do so herself. She was told that the respondent was not recording the meeting, and that she could not do so. She appeared to accept that decision but recorded the meeting in any event, and without informing the respondent. The claimant then prepared a transcript from her own private recording, but when she disclosed the transcript which resulted, she dishonestly deleted details of the private conversation with her union representative Mr O'Keefe which presumably she considered to be damaging to her case. The claimant failed to disclose the recording to the respondent to enable the respondent to

check the transcript, and to reveal her true actions, until the day before this hearing commenced. This dishonest course of action was also in clear breach of the repeated case management orders.

45. We agree with the respondent's assertion that the claimant therefore materially breached the Tribunal orders relating to disclosure, and that these breaches were unreasonable, dishonest and deliberate, and that the respondent was put to additional time and costs in dealing with it. In addition, it was a deliberate attempt by the claimant to mislead the Tribunal.
46. We now turn to the proceedings themselves from the outset, and we agree with the respondent's contention that the claimant acted unreasonably and/or vexatiously in both the bringing of these proceedings in the first place, and the way in which they have been conducted.
47. The claimant brought an extensive list of allegations which covered many jurisdictions over a number of years, and many of these were unrelated historical allegations which on the face of it were clearly out of time. Despite originally agreeing to limit her claim to her seven best Chosen Allegations, the claimant deliberately sought to expand her claim beyond this (as is evidenced by her proposed List of Issues and her eventual written witness statement). In dismissing the claimant's seven best Chosen Allegations we found that many of the complaints which formed the basis of her claims were unfounded and exaggerated and had been used by the claimant as an oppressive and intimidating tool against other employees. We refer to paragraph 171 of the Reserved Judgment:
48. 171: … We find that it was the manner in which the claimant made these complaints (including for the avoidance of doubt the three protected acts mentioned) namely the claimant's repeated use of unfounded and exaggerated claims and allegations which she used as an oppressive and intimidating tool against other employees, which already by then had given rise to the irretrievable breakdown in relationships.
49. The respondent also reminds us that the claimant failed to discharge the burden of proof and was unable to make out any prima facie case in relation to her claim of sex discrimination. As confirmed in section 139 of the Reserved Judgment:
50. 139: … we find that no facts have been established upon which the tribunal could conclude (in the absence of an adequate explanation from the respondent), that an act of discrimination has occurred.
51. The same applies to the claimant's claim in relation to alleged detrimental treatment for either trade union activity or health and safety reasons, as confirmed in paragraph 143 of the Reserved Judgment:
52. 143: … we make the point that any detriment or adverse action on the grounds of either trade union activity or health and safety complaints were inherently improbable for the following reasons. In the first place the respondent was supportive of trade union activities. It recognised two independent trade unions which included recognition for collective bargaining purposes. It provided facilities for trade union membership, meetings and ballots and had a good working relationship with both shop stewards and full-time officers. In addition, the respondent had a proactive and supportive attitude to health and safety matters which included the Near Hit procedures and encouraged its staff and managers to report health and safety related matters, in order continually to monitor and improve its practices. Against this background we find that it is very unlikely that the respondent would take any detrimental action against the claimant because she was actively involved in the trade union and/or because she was a health and safety representative for the drivers.
53. These were all reasons which ought to have been obvious to the claimant in the first place. The respondent makes the point that the claimant's claims lacked any reasonable prospect of success, and they were a further example of the claimant using unfounded and exaggerated complaints as a tool of intimidation. In addition, the claimant's dishonesty and pursuit of exaggerated and unfounded allegations continued during the course of the hearing. The claimant asserted during the hearing that the respondent had actively canvassed and encouraged other employees to raise grievances against her which were malicious and/or false. We pointed out to the claimant (and her legal representative) at the commencement of the hearing that these were serious allegations which she might consider withdrawing in the absence of any evidence to support them. The claimant persisted in those allegations, without any evidence to support them, and without putting those serious allegations to the respondent's witnesses during the course of the hearing. We commented on this in paragraph 102 of the Reserved Judgment:

54. 102: … the claimant asserted not only that the allegations raised against her were “malicious and false”, but also that the respondent had actively canvassed and encouraged other employees to raise grievances against her which were malicious and/or false, and that the respondent was guilty of “selectively cultivating evidence against me in bad faith”. The claimant persisted in those allegations, and did not withdraw them at this hearing, even though she was not able to adduce any evidence to support these serious allegations. In addition, these allegations were not put to the respondent’s witnesses during the course of this hearing such as to give them the opportunity to address or deny those allegations. We accept that employees were asked by Miss Shellshear if they intended to pursue formal grievances against the claimant, but this falls way short of the claimant’s allegations that the respondent actively encouraged the presentation of grievances, or more seriously ones which were deliberately false or malicious. This was a clear example to us of the claimant’s conduct of which the respondent and its employees and managers had repeatedly complained, namely her willingness throughout her employment to make serious allegations amounting to gross misconduct against the respondent’s employees, managers, or members of the HR Team, when she had no clear evidence to back her assertions, and regardless of the impact which the seriousness of those allegations would have against the recipients.
55. We also found that the claimant was deliberately evasive and dishonest during her answers in cross examination. As we stated in paragraph 105 of the Reserved Judgment:
56. 105: … there were occasions during her cross examination in which we found the claimant’s answers to be both deliberately evasive and contrary to the record of the relevant contemporaneous documents. For example, the claimant stated in her witness statement, and maintained in cross examination, that she was unaware that her transfer to Exeter was the result of allegations against her pending investigation into those allegations until December 2018. However, her own covertly recorded transcript of the meeting of 4 April 2019 confirmed the respondent’s position that the claimant had been formally made aware of the allegations on 19 June 2018 and in any event she had learned of the grievances via rumours very shortly after they had been made …
57. In addition, as recorded in paragraph 104 of the Reserved Judgment, the claimant conceded that her actions in connection with the first covert recording amounted to a gross breach of trust, but for some reason unreasonably refused to concede the same in relation to the second covert recording.
58. The consequence of the claimant’s conduct set out above is that the respondent incurred substantial costs in defending these proceedings, and in dealing with the extensive claims which were unreasonably and maliciously brought against it by the claimant. This included: (i) defending the claims through to the conclusion of the full merits hearing; (ii) attending a total of six case management hearings which were required to be listed to seek to manage the claimant’s claims proportionately; (iii) dealing with the hearing bundle and witness statements which substantially exceeded the initial limits set with the consent of the parties as the claimant sought to expand her case beyond the scope of her Chosen Allegations; (iv) incurring unnecessary time and expense in seeking to identify and verify the nature of the transcripts of recordings disclosed to it by the claimant; (v) preparing lengthy witness statements to counter the claimant’s expanded and exaggerated claims; and (vi) incurring costs generally in preparing for the full main hearing and representing the respondent’s interests at that hearing.
59. As noted above, the Tribunal should look at the matter in the round rather than dissecting various parts of the claim and the costs application, and then compartmentalising it. There is no need for the tribunal to find a causative link between the costs incurred by the party making the application for costs and the event or events that are found to be unreasonable.
60. <u>Conclusion</u>
61. For the reasons set out above we have no hesitation in unanimously deciding that the claimant has acted vexatiously and unreasonably in the bringing of these proceedings, and in the way in which the proceedings have been conducted. We have regard to the two-stage process outlined in <u>Monaghan v Close Thornton</u> by Lindsay J at paragraph 22: "Is the cost threshold triggered, e.g. was the conduct of the party against whom costs is sought unreasonable? And if so, ought the Tribunal to exercise its discretion in favour of the receiving party, having regard to all the circumstances?”
62. In this case we unanimously agree that the costs threshold has been triggered because the conduct of the claimant was vexatious and unreasonable, and having regard to all the

circumstances we unanimously agree that we should exercise our discretion in favour of the respondent.

63. We unanimously agree that the respondent's application under both Rules 76(1) and 76(2) should be allowed, and we therefore order that the claimant should pay to the respondent the costs of defending these proceedings.
64. The Amount of Costs Payable
65. The respondent has prepared a schedule of the costs which it applies to recover which replicates 24 invoices which its solicitors have rendered to the respondent between 23 September 2018 and 19 November 2020. These invoices have been discharged by the respondent. The solicitors' profit costs amount to £112,456.60, and counsel's fees of £44,150.00, both net of VAT, which gives rise to total costs claimed in the sum of £187,927.92 including VAT. The respondent is however registered for VAT, and accordingly VAT should not be included in a claim for costs if the receiving party is able to recover the VAT. The claim for costs and disbursements net of VAT is therefore £156,606.60.
66. This clearly exceeds the limit of £20,000 which the Tribunal is able to order under Rule 78(1) without a detailed assessment. In its application the respondent seeks an order for payment of the costs it has incurred subject to a detailed assessment under Rule 78(1)(b), or in the alternative a fixed sum of £20,000 in accordance with Rule 78(1)(a).
67. Given the size of the respondent's claim for costs and the fact that it far exceeds the limit of £20,000, we unanimously agree that the claimant should be ordered to pay the respondent's costs subject to detailed assessment, and further directions in that regard have now been made.

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Employment Judge N J Roper
Dated 14 April 2022

Judgment sent to Parties on
10 May 2022 By Mr J McCormick

For the Tribunal Office