Case Numbers: 1401373/2021
1401244/2021

EMPLOYMENT TRIBUNALS

Claimant: **Mr B Lingard**

Respondent: **Sussex Partnership NHS Foundation Trust**

Heard at: **Bristol (by VHS)** **On:** **25 May 2022**

Before: Employment Judge Midgley

Representation
Claimant: In person
Respondent: Mr G Burke, Counsel

JUDGMENT

1. The claimant's renewed application for the hearing to be postponed, which was first refused on 6 May 2022, is dismissed as it was not pursued at the hearing and it was not in the interests of justice to adjourn the hearing.

2. The claimant's application for the Judge to recuse himself on the grounds of actual or apparent bias is dismissed.

3. The claimant's application for reconsideration of the decision to strike out claim 1401373/2021 is refused as the claimant has no reasonable prospects of showing that it is in the interests of justice for the decision to be varied or revoked.

4. The claimant acted unreasonably, vexatiously, and abusively in pursuing claim 1401373/2021 and is ordered to pay the respondent's costs in the sum of £20,000.00 (TWENTY THOUSAND POUNDS).

5. The claimant's application for costs against the respondent is dismissed as it was not pursued.

JUDGMENT having been handed down orally in the absence of the claimant, the claimant having absented himself from the hearing following the dismissal of his application for the Judge to recuse himself, the following reasons are provided in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013.

REASONS

1. This is my Judgment addressing:
   a. the claimant's applications for me to recuse myself,
   b. the claimant's application for reconsideration of the strike out of claim 1401373/2021,
   c. the respondent's application for a costs Order to be made against the claimant for the costs of defending claim 1401373/2021;
   d. the claimant's application for costs in claim 1401373/2021.

2. My decision in respect of (a) above was given orally to the parties in the presence of the claimant; that in (c) was given orally in the absence of the claimant (who had by then left the hearing which was conducted in his absence), and the Judgment in (b) and (d) was reserved, given the lack of time to provide an oral judgment during the hearing.

Procedure, Evidence and Hearing.

<u>The procedural history</u>

3. On 5 January 2022, I conducted a preliminary hearing which was broad ranging: it addressed the claimant's application for me to extend time to permit the claimant to apply for reconsideration of a dismissal judgment of 26 February 2020 following the withdrawal of Claim 1406410/2109; the respondent's application for Claim 1401373/2021 to be struck out on the grounds of res judicata/issue estoppel; and lastly the respondent's application for claim 1401244/2021 to be struck out on the grounds that it had no prospects of success, alternatively for the claimant to be ordered to pay a deposit to pursue the claim.

4. For reasons that are set in a case management record and a reserved Judgment which was sent to the parties on 15 March 2022, I refused permission to extend time to apply for reconsideration of 1406410/2019, struck out claim 1401373/2021, and made deposit orders in respect of claim 1401244/2021.

5. The claimant applied for written reasons for the decision not to extend time on 5 March 2022. I refused that application as it was made out of time,

extensive reasons were given orally at the hearing and no reasonable basis for the claimant's failure to comply with the time limit had been provided. Notice of the refusal was sent to the parties on 4 April 2022

6. On 9 March 2022, the claimant applied for reconsideration of the Deposit Order made in respect of claim 1401244/2021. He expanded on that application in further emails of 10 and 15 March, which repeated and enlarged upon the grounds, albeit the claimant's practice of amending documents which had already been sent made it very difficult to identify the grounds. One of the grounds of the application was that the respondent had failed to include relevant documents within the bundle for the preliminary hearing which demonstrated the link between the respondent and the priory in terms of the information that was passed to the NMC fitness to practice investigation (which formed the detriments in the victimisation in claim 1401244/21).

7. The respondent objected to any reconsideration on 18 March 2023, providing detailed grounds in an attachment.

8. On 28 March 2023 a Judgment dismissing the application for reconsideration in claim 1401244/2021 was sent to the parties. At the same time the claimant's application for reconsideration of the decision not to extend time in claim 1406410/2019 was rejected on the basis that there was no right to apply for reconsideration of the refusal to extend time to apply for reconsideration of a decision which had already been dismissed; reasons were given with my order.

9. On 30 March 2022, the respondent made a claim for its costs in claim 1401373/2021. Separately the respondent had applied for its costs in claim 2300941/2020 following its dismissal by EJ Richardson on 4 April 2021; that claim had been presented to London South Tribunal. The application was heard by EJ Hyams-Parish on 31 March 2022. He awarded costs of £10,000.00 to the respondent.

10. On 1 April 2022 the claimant made a judicial complaint against me to the Regional Employment Judge. On 7 April 2022 he applied for me to be prevented from hearing the case on the grounds that (a) I had failed to address his arguments in my reserved Judgment and (b) I had been instructed by many NHS Trusts when in private practice.

11. On 2 April 2022, the claimant made an application for costs in claim 1401373/2021 in respect of the time taken to prepare a bundle for the preliminary hearing on 5 January 2022.

12. On 8 April 2022, the claimant's Judicial complaint was rejected by the Regional Employment Judge.

13. On 22 April 2022, I directed that the telephone case management hearing should be converted to a one-day preliminary hearing by video to hear the parties' costs applications and to case manage claim 1401373/2021.

14. On 6 May 2022, the Regional Employment rejected the claimant's application to transfer the case out of the region.

15. On 10 May 2022 the claimant sent approximately 19 emails to the Tribunal. He stated that he would not attend the cost hearing because he felt unsafe; suggested that the costs hearing went ahead in his absence and said that he would appeal to EAT. He also suggested the respondent had claimed twice for costs, having been awarded costs by the Croydon Employment Tribunal. He suggested that permitting the hearing to go ahead and refusing his application for the claims to be transferred to a different region was victimisation for making a complaint against me. He then sent written submissions to be considered in his absence; first in an email and then separately as an attachment to an email. Those submissions appeared to consist of his grounds of appeal to the Employment Appeal Tribunal largely against the costs order that was made against him in claim 2300941/2020.

16. On 11 May 2022 the claimant was sent the respondent's skeleton argument for the cost hearing. On the same day he sent approximately seven emails to the Tribunal in which he complained that the Regional Employment Judge, me, and other Judges in the region were variously 'corrupt', 'bent', 'masons' and conspiring with the respondent's counsel and solicitor to defeat his claims, and that I, the Regional Employment Judge and the respondent's representative were colluding to commit a fraud. He demanded that his application to strike out the costs application on the grounds of issue estoppel (which I understand to be his argument that the respondent should not be permitted to apply for costs which it had already been awarded by another Tribunal) be addressed as the first application at the preliminary hearing.

17. On 12 May 2022, the claimant emailed to confirm that he would in fact attend the hearing.

18. On 13 May 2022, the claimant emailed the Tribunal addressing his ability to pay, in which he complained that his mental health condition had had the effect that he had not worked for 16 of the last 20 years. On the same day, the Regional Employment Judge wrote to the claimant identify the following relevant matters:

    a. Since the REJ wrote on 10 May instructing the claimant to desist from sending correspondence to the Tribunal, the claimant had sent

approximately 41 emails and the Tribunal's administration simply did not have the resource to manage that volume of email correspondence.

b. The claimant was encouraged to attend the hearing and warned that orders might be made in his absence if he did not attend.
c. The claimant was again instructed to desist from sending correspondence unless he was making an urgent application and was advised that correspondence in relation to his appeals should be directed to the EAT and that relating to his complaint against me to the Judicial Ombudsman.
d. Directions were made for the respondent to set out the basis of its application for costs by 19 May 2022 so that the claimant could consider it in advance of the hearing.

19. The claimant continued to send multiple emails on a daily basis, ignoring the clear instruction from the Regional Employment Judge: between 13 May and 16 June the claimant has sent 127 emails to the Tribunal. The emails vary between short one- or two-line emails to those multiple pages, most are critical and offensive, many are defamatory, and many address issues in claims which were irrelevant to the costs application, including correspondence that should have been sent to the Employment Appeals Tribunal. A good number referred to advice or comments from a solicitor who reportedly had provided (or was providing) paid advice the claimant[1] but who was not on record, and often the suggested advice or comment was misconceived in fact or law. Some suggested that the claimant had reported the Regional Employment Judge, me, and the respondent's representatives to the police.

20. Such was the volume of emails from the claimant that it became impossible for them to be referred to a Judge and considered before the costs hearing. The clamant had been warned that the Tribunal lacked the resources to process his emails, but he had knowingly and deliberate ignored that advice.

21. On 14 May 2022, the claimant confirmed that he was not withdrawing the claims.

22. Amongst the emails which were sent in this category were the following:

23. On 15 May 2022 the claimant alleged that I had changed the Judgment in claim 1401244/2021 from that which I gave orally at the previously preliminary hearing to that contained in the case management summary and reserved judgment. He applied again for reconsideration of claim 1401244/21. I did not see this email before the costs hearing.

[1] See in particular the email of 18 May 2022 at 03:35am which reports "after paying for extensive legal advice, he's shocked at what's going on with the working's of the court."

24. On 16 May 2022 the claimant suggested that I had been included in criminal activity in the manner in which I resolved the applications in this claim and claim 1401244/2021 at the previous preliminary hearing. I did not see this email. On the same day the respondent confirmed that it wished to pursue its application for costs in this claim.

25. On 18 May 2022 the claimant emailed what was alleged to be a witness statement. It was a regurgitation of all the matters that the claimant believed were injustice in relation to all of his claims. Put simply, that comprised any matter where the court had determined an argument against his interests. I had read this email.

26. The essence of the claimant's arguments at the outset of the hearing on 25 May 2022 was therefore understood to be as follows:

    a. The Judge should recuse himself on the grounds of actual bias on the basis that he was part of a conspiracy (whether masonic or not) involving the Regional Employment Judge, Mrs Daw, the respondent's solicitor, and Mr Burke, the respondent's counsel, to commit a criminal activity, possibly fraud,
    b. Alternatively, the Judge should recuse himself on the basis of apparent bias because the reserved Judgment of 15 March 2022 had not addressed the claimant's arguments and the hearing was not recorded; and if that were refused, then
    c. The cost hearing should be adjourned and the claim transferred to a different region; if that were refused, then:
    d. The claimant's application to strike out the cost application on the grounds of res judicata or double jeopardy should be heard at a separate preliminary hearing which should take place before the respondent's application; and lastly that
    e. The claimant needed an agenda for the preliminary hearing as a reasonable adjustment.

27. On 24 May 2022, the file was referred to me in relation to the claimant's correspondence from 19 May 2022 timed at 21:38 until 23 May at 14:03. I refused the claimant's application for a separate preliminary hearing as the claimant was able to argue the points concerning duplication of costs between the costs addressed in the Order of EJ Hyams-Parish and those sought in this hearing during the hearing itself and as there was in any event no time to list an earlier preliminary hearing, it was not in the interests of justice to adjourn the hearing on 25 May 2022. In so far as the claimant sought reconsideration of the Judgment of 5 January 2022, I refused the application as I had previously refused it and there was no right to renew the application. I directed that any issues as to the content of the bundle should

be raised at the hearing itself; again there was no time for them to be resolved before the hearing.

The applications at the hearing - Recusal

28. The respondent had prepared a bundle consisting of its skeleton argument and authorities, the claimant's skeleton argument (including the revised version which had been resent on the morning of the hearing), the respondent's documents (which included a sample of the records of the claimant's emails to the respondent).

29. At the outset of the hearing, which the claimant attended, I explained that I had understood his objections to my hearing the claimant to be tantamount to an application for me to recuse myself. I set out the basis of what I understood his case to be (as detailed in paragraph 26 above), and the nature of the test to be applied.

30. I invited the claimant to make his application; that was a difficult process because the claimant largely descended into a tirade of vitriol, making accusations of fraud and conspiracy, complaining that I had fraudulently misrepresented that I would provide written reasons for the decision not to extent time to permit reconsideration of the dismissal of clam [x] so as to induce him to withdraw his claim to the EAT. He repeatedly talked over me, refused to listen, and interrupted myself and Mr Burke; nevertheless he was given the time to make all the points that he wanted. Once the claimant had concluded his arguments, I heard from the respondent before taking time to consider my judgment which I delivered orally to the parties. It is set out below as the claimant has requested written reasons.

Judgment on the recusal application

31. The claimant's application is for me to recuse myself on the grounds of either apparent or actual bias.

The relevant law

32. The test which I must apply was set out by the House of Lords in Porter v Magill [2002] 2 AC 357 by Lord Hope at paragraph 103 (and was recited with approval by Lord Justice Pill in Ludwick v London Borough of Southwark EAT 0116/05 at paragraph 18). The test is whether the fair minded and informed observer having considered the facts would conclude that there was a real possibility that the Tribunal was biased.

33. The following principles apply to that test:

a. If there is an objection of Bias made, then it is the duty of the Employment Judge to consider the objection and exercise his or her judgement upon it. He would be as wrong to yield to a tenuous or frivolous objection as he would to ignore an objection of substance (see Locabail (UK) Ltd v Bayfield Properties Ltd and other cases [2000] IRLR 96 at paragraph 21). In that context although it is important that justice must be seen to be done it is equally important that judicial officers discharge their duty to sit and do not by exceeding readily to the suggestions or appearance of bias encourage parties to believe that by seeking the disqualification of a Judge they will have their case tried by someone thought to be more likely to decide the case in their favour (see Ray JRL ex party CJL [1986] AC 342 at paragraph 352) which was approved in Locabail.

b. It is the duty of a judicial officer to hear and determine the cases allocated to him or her by the Head of Jurisdiction. Subject to certain limited exceptions a Judge should not exceed to an unfounded disqualification application (Clenae Pty Ltd v Australia & New Zealand Banking Group Ltd [1991] VSCA 35 recited in Locabail at paragraph 24).

c. The EAT should test the employment tribunal's decision as to recusal and also consider the proceedings before the tribunal as a whole and decide whether a perception of bias had arisen: Pill LJ in Lodwick, at paragraph 18.

d. The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without something more found a sustainable objection: Locabail at paragraph 25.

e. Parties cannot assume or expect that findings adverse to a party in one case entitle that party to a different judge or tribunal in a later case. Something more must be shown: Pill LJ in Lodwick above, at paragraph 21, recited by Cox J in Breeze Benton Solicitors (A Partnership) v Weddell [2004] All ER (D) 225 (Jul) at paragraph 41.

f. Courts and tribunals need to have broad backs, especially in a time when some litigants and their representatives are well aware that to provoke actual or ostensible bias against themselves can achieve what an application for adjournment (or stay) cannot: Sedley LJ in Bennett at paragraph 19.

g. The mere existence of a complaint against a particular tribunal member cannot give rise to an automatic decision to recuse (Ansar v Lloyds TSB Bank plc and ors [2007] IRLR 211, CA).

h. In Dobbs v Triodos Bank the Court of Appeal observed "It is always tempting for a Judge against whom criticisms are made to say that he would prefer not to hear further proceedings in which the critic is involved. It is tempting to take that course because the Judge would know that the critic is likely to go away with a sense of grievance if the decision goes against him, but it is important for a Judge to resist the temptation to recuse himself simply because it would be more comfortable to do so. The reason for this is if a Judge were to recuse himself whenever a litigant criticised them we would soon reach the position in which litigants were able to select Judges to hear their case and simply by criticising all the Judges they did not want to hear their cases. It would be easier for a litigant to produce a situation where a Judge felt obliged to recuse himself simply because he had been criticised whether that criticism was justified or not."

i. In any case where there is real ground for doubt, that doubt should be resolved in favour of recusal: Locabail at paragraph 25.

34. Whilst recognising that each case must be carefully considered on its own facts, a real danger of bias might well be thought to arise (Locabail at paragraph 25) if:

(a) there were personal friendship or animosity between the judge and any member of the public involved in the case; or

(b) the judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or,

(c) in a case where the credibility of any individual were an issue to be decided by the judge, the judge had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or,

(d) on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on their ability to try the issue with an objective judicial mind; or,

(e) for any other reason, there were real grounds for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues.'

35. In relation to the definition of an impartial observer the Court of Appeal pointed out in Jones v Das [2004] IRLR 218 at para 28 that: "Without being complacent nor unduly sensitive or suspicious, the observer would appreciate that professional judges are trained to judge and to judge objectively and dispassionately. This does not undermine the need for constant vigilance that judges maintain that impartiality - it is a matter of balance.

36. In Locabail, paragraph 21, the court found force in the following observations of the Constitutional Court of South Africa in President of the Republic of South Africa and others v South African Rugby Football Union and others 1999 (7) BCLR 725 (CC), 753: 'The reasonableness of the apprehension [for which one must read in our jurisprudence "the real risk"] must be assessed in the light of the oath of office taken by the judges to administer justice without fear or favour, and their ability to carry out that oath by reason of their training and experience. It must be assumed that they can disabuse their minds of any irrelevant personal beliefs or predispositions ... At the same time, it must never be forgotten that an impartial judge is a fundamental prerequisite for a fair trial ..."

37. Furthermore, the Hypothetical observer would, it was said in Porter v McGill, be apprised of all the relevant circumstances including matters not necessarily known to the parties at the time of the hearing as well as the Employment Judges or members explanations.

Discussion and conclusions

38. The grounds on which the claimant advances the application are as follows and I address them and my conclusions on them in turn.

39. The first is that since the claimant has appealed my earlier decision from a preliminary hearing to the Employment Appeal Tribunal an inevitable and irresistible conclusion must be drawn from that fact that I would be unhappy about it, that I would be unable to place that matter out of my mind, and furthermore that I would in consequence be unable to approach my duties in accordance with the judicial oath that I took.

40. In Lodwick the Employment Appeal Tribunal confirmed that a tribunal's previous judicial decisions were not normally, without more, to be thought to have a bearing upon a Judge's impartiality in any particular case. It seems to me therefore, that there is nothing in the first ground beyond the usual circumstances that a party can appeal against the Judgment of a tribunal Judges. The claimant has not identified anything more which would demonstrate that I am in the eyes of the fair minded and informed observer

incapable of approaching my judicial duties in accordance with my oath simply because I heard and determined the preliminary hearing on 5 January 2022. There is nothing of substance in this ground.

41. The second overarching allegation that the claimant makes in support of the application is that in previous decisions I have demonstrated either an inability or an unwillingness to identify, reference, and address the arguments and evidence that he advances or has advanced in support of applications that have been made. In particular he relies upon the following matters to demonstrate that argument

    a. In reaching my decision on the deposit Order in case 1401244/2021 he alleges that I omitted to make reference to documents which related to the issue of whether there was a link between the respondent, the Priory and the NMC that demonstrated the strength of his victimisation claim;

    b. Secondly, he argues that Employment Judge Richardson stated that he would be entitled to pursue new allegations that would not be estopped by her decision to strike out claim 2300941/2020 on the grounds of issue estoppel or the Rule in Henderson v Henderson. That fact, he argues, was not referenced in either the Judgment of EJ Richardson or in my subsequent Judgment on the claimant's application for reconsideration.

42. I remind myself and of the principles that relate to Judgments that most recently were expressed by the Employment Appeal Tribunal in Egbert v Genesis Education 2022, a decision that was handed down in May 2022 and which cited with approval the decision of Lord Justice Popplewell in the Court of Appeal in Law v Greenberg in 2021:

    a. The decision of the Tribunal must be read fairly and as a whole without focussing merely on individual phrases or passages in isolation and without being hypercritical. Over analysis of the reason in process being hypercritical in the way in which a decision is written focussing too much on particular passages or terms of phrase that neglected the decision read in the round are all weaknesses to avoid.

    b. Critically, however, the second principle is as follows: A Tribunal is not required to identify all the evidence it relied upon in reaching its conclusions of fact: to impose such a requirement would put an intolerable burden on any fact finder; nor is it required to express every step of its reasoning in any greater detail than necessary to meet compliance. Expressions of findings and reasonings in terms which are simple, clear, and concise as possible are to be encouraged.

    c. In Meek v City of Birmingham District Council [1987] IRLR 250, the Court of Appeal observed that the Tribunal's reasons are "not intended to include a comprehensive and detailed analysis of the case, either in terms of the facts or the law; the purpose remains what it has always been, which is to tell the parties in broad terms why they lose or as the case may be win. I think it would be thousand pities if these reasons began to be subjected to a detailed analysis and appeals are to be

brought based upon any such analysis. To my mind it is to misuse the purpose for which the reasons are given…. It follows from that it is not legitimate from the appellate court or indeed a litigant to reason that a failure by an Employment Tribunal to reference evidence means that …it was not taken into account in reaching the conclusions expressed in the decision. What is out of sight of the language of the decision is not to be presumed to be non-existent in mind."

d. Similarly, Mr Justice White observed in RSPB v Croucher "decisions are not to be scrutinised closely word by word or line by line, and for clarity and industrial Tribunals are not expected to set out every factor in every piece of evidence that has raised with them before reaching their decision."

43. Returning to this particular ground of the application I observe as follows: The mere fact that I have not referenced all of the claimant's arguments does not mean that they were not considered. I set out the key arguments but took all the claimant said into account.

44. Secondly, I do not accept the claimant's argument that he referred me evidence showing the link between the respondent, the Priory and the NMC. I note that part of his argument in relation to reconsideration of the deposit order was that the respondent had failed to include those documents in the bundle (see paragraph 9 above).

45. In conclusion, the Judgment is in the form envisaged in Greenberg, it sets out the key features that led to the decision and records the evidence and those arguments which I found to be persuasive. It was not necessary to set out each and every made and explain why I rejected it. That would be to impose an impossible burden, particularly in preliminary hearings. Bearing in mind that the fair minded and informed observer would be aware of those authorities and the principles I have rehearsed, seems to me there is nothing within this ground of application that would lead that observer to conclude that there was actual bias or the risk of apparent bias arising out of the matters that the claimant has identified.

46. For those reasons I rejected the claimant's application to recuse myself and continued to conduct the hearing.

The claimant's application for reconsideration of the Judgment striking out claim 1401373/2021

47. The claimant did not advance the application at the hearing. In so far as I can identify the grounds on which the claimant seeks reconsideration from the claimant's 56 page document which appeared at Tab B of the bundle for the hearing, it appears from page 18 and 19 of that document that the claimant argues the following:

a. I conspired with the respondent and/or its solicitors to participate in a fraud to incite or procure the claimant to withdraw his appeal in relation to ET case 2300941/2020;

b. That I failed to engage with the claimant's arguments or evidence generally;
c. That I erred in my application of the law in Henderson v Henderson and issue estoppel.

48. Grounds (a) and (b) repeat the allegations which relied upon by the claimant in the recusal application. For the same reasons as those given above, I reject them, but in any event I am satisfied that the demonstrate no basis on which it could be said that the claimant has reasonable prospects of demonstrating that it would in the interest of justice to vary of revoke the Judgment.

49. Ground (c) relies upon the same arguments that the claimant advanced at the hearing in January 2022. All the arguments set out in the claimant's written argument at pages 16 to 35 were raised to a greater or lesser extent in the claimant's written arguments for the hearing in January 2022 which and/or in his oral arguments. I considered them before striking out the claim.

50. In so far as the application entreats me to reconsider and review my decision on matters of fact or arguments which I have previously determined, the Employment Appeal Tribunal ("the EAT") in Trimble v Supertravel Ltd [1982] ICR 440 decided that if a matter has been ventilated and argued then any error of law falls to be corrected on appeal and not by review. In addition, in Fforde v Black EAT 68/60 the EAT decided that the interests of justice ground of review does not mean "that in every case where a litigant is unsuccessful, he is automatically entitled to have the tribunal review it. Every unsuccessful litigant thinks that the interests of justice require a review. This ground of review only applies in the even more exceptional case where something has gone radically wrong with the procedure involving a denial of natural justice or something of that order".

51. There was no denial of natural justice in this case; rather I considered the evidence and the parties' arguments and found on balance that the complaints in this claim had been or should have been raised in the first and second claims for the reasons recorded in the Judgment. That is the usual process of a Tribunal where facts and their consequence are disputed.

52. Accordingly, I refuse the application for reconsideration pursuant to Rule 72 because it is not in the interest of justice for the Judgment to be varied or revoked.

The respondent's cost application

53. Having handed down the Judgment on the recusal application, the claimant disconnected from the VHS platform, despite my entreaties that it was not in his interests to do so, and that I was prepared to allow a short adjournment for him to consider that intention. I explained that if he left the hearing, I would continue to hear the costs application in his absence.

54. Having left the hearing, the claimant began to send emails to the Tribunal, including a request for written reasons for the dismissal of his recusal

application. I learned of the emails after the hearing. Had the claimant wishes to make representations at the hearing, he should have participated in it.

55. In preparation for the hearing I have been provided with a bundle containing the following:

    a. The respondent's skeleton argument and authorities (Bundle A)
    b. The claimant's submissions and documents which appeared to contained further submissions (Bundle B)
    c. Two statements of Catherine Daw, prepared on behalf of the respondent in support of the application, together with exhibits including a partial log of emails received from the claimant (Bundle C)
    d. The respondent's bundle for the hearing, which was not agreed (Bundle E).

56. I set out what I understood the claimant's arguments to be in relation to the respondent's costs application, by reference to Bundle B, and directed Mr Burke to identify any others which I had omitted, in accordance with his duty to the court as the claimant was a litigant in person. I then heard the respondent's submissions on the costs application, took time to consider the claimant's arguments as they were understood and to consider the application, before providing an extempore Judgment.

Judgment on the costs application

57. The respondent advances two grounds for the application. Firstly, that the claimant's conduct in pursuing the claim was vexatious, unreasonable or otherwise an abuse of process. The primary thrust of the respondent's argument is that the claimant has sought to abuse the process of the Tribunal to secure some form of concession from the respondent through the sheer volume, tone, and content of emails he sent to the respondent and to the respondent's representatives, knowing and intending that the volume of those emails would cause the respondent considerable cost and/or distress.

58. Secondly, it argues that the claimant's claims in 1401373/2021 had no reasonable prospect of success and the claimant knew or ought reasonably to have known at the time that he presented them that that was the case. Mr Burke argued that the lack of prospects had been identified, extrapolated, and explained in detail by the respondent's Counsel, by EJ Richardson, and EJ Michell, and therefore the claimant knew or must have known that in issuing claim 1401373/2021 he was impermissibly seeking to relitigate matters that had already been the subject of his earlier claims which had been dismissed. Lastly, his emails demonstrated that he recognised that there was no reasonable prospect of success for these claims on the grounds of the issue of estoppel or the rule in Henderson v Henderson.

59. The following background facts are of relevance to the assessment I must undertake.

60. The claimant is a qualified mental health nurse. He has issued four claims over the last two years or so. Whilst he has appeared as a litigant in person at all the hearings, he has had the benefit of professional legal advice and has engaged at least three different firms of solicitors across that period, and informed the respondent that he has incurred legal fees in excess of £17,000, including the receipt of advice of unnamed Leading Counsel.

61. In these proceedings the claimant relies upon PTSD and depressions as conditions amounting to disabilities within the definition of s.6 EQA 2010.

62. The respondent's claim for costs is in respect of the period 3 June 2021, when claim 1401373/2021 was received and its dismissal on 4 March 2022. It relies upon the background in relation to other claims in earlier periods to demonstrate that the claimant knowingly and deliberately set excessive volumes of emails as a deliberate tactic, despite requests from the respondent to desist and direct warnings from Tribunal Judges. The level of emails sent by the claimant is staggering they exceed 12,000, whilst their content has become increasingly bizarre, abusive, and threatening.

63. In that context the following matters are relevant:

64. As early as April 2020, the respondent's HR department requested that the claimant should cease to send such volumes of emails, warning that they would be blocked. That warning and request was repeated by the respondent's solicitors as early as November 2020. Since that request, the respondent and its solicitors have had to block over 112 different email addresses that the claimant has used to try to bypass the respondent's and respondent's solicitors' efforts to manage his emails.

65. The claimant has sent over 420 emails to the respondent's counsel directly despite (a) knowing that the respondent is represented by solicitors and (b) being told that it was therefore no appropriate to email counsel directly.

66. The claimant has received repeated Judicial warnings about his conduct:

    a. On 3 December 2020 EJ Michel warned the parties at paragraph 14 of his Orders against "unnecessary proliferation of inter parties emails . . . resulting in excessive time being spent on the case," warning that " . . . Costs consequences may follow in the event that either party is found to have acted unreasonably in their conduct of the litigation. " Following that warning the claimant sent over 200 emails between 25 January 2021 and 26 February 2021.

    b. On 4 March 2021, EJ Richardson repeated that warning, referring to the risks of mistreating people through the volume of emails in litigation.

    c. Despite EJ Hyams-Parish making a costs order in claim 2300941/2020 in March 2022, and expressly warning the claimant in the Judgment dated 9.3,22 and sent to the parties on 31.3.22 as set out below, his conduct has continued unabated:

> *"45. Having listened carefully to the evidence of Ms Daw, together with the submissions by Mr Burke, I was shocked at the manner in which the claimant has conducted this case and the level of abuse suffered by the respondent and those representing them. It is wholly unacceptable; they should not have to tolerate the level and content of emails sent by the claimant, amounting in my view to harassment. There is no doubt in my mind that the claimant acted abusively, disruptively and unreasonably within the meaning of Rule 76(l)(a) of the ET Rules.*
>
> *47... I was concerned about his continuing to make serious allegations about those representing the respondent, without any evidence of such claims."*

67. Thus, in the period 27 February to 25 April, the latter falling after the costs order, the claimant sent 2000 emails.

68. Similarly, whilst the claimant's conduct towards the Tribunal is not the subject of the application for costs (and could not be), it is relevant to the question of the deliberate nature of the claimant's conduct that despite being directed by the Regional Employment Judge not to send copious unnecessary correspondence to the Tribunal he has sent over 172 emails to the Tribunal in less than a month.

The relevant law

69. Rule 76 of the ET Rules of Procedure 2013 provides, inter alia, that 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 unreasonably either in 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.

70. 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 …"

71. 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

72. The process of making a costs order requires a three-stage process (Hossaini v EDS Recruitment Ltd [2020] ICR 512, at para 64):

a. First, the Tribunal must assess whether the threshold or thresholds relied upon have been crossed;
b. If so, decide whether the discretion to make a costs order should be exercised; and
c. If so, determine in what amount.

73. 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 [2003] IRLR 82, CA:

"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 …"

74. Nonetheless, an Employment Tribunal must consider, after the claims were brought, whether they were properly pursued (see for instance NPower Yorkshire Ltd v Daley EAT/0842/04). If not, then that may amount to unreasonable conduct.

75. 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 [2012] IRLR 648 EAT 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".

76. These statements were approved by Underhill P in Vaughan v London Borough of Newham [2013] IRLR 713.

Unreasonable conduct

77. 'Unreasonable' has its ordinary English meaning and is not to be interpreted as if it means something similar to 'vexatious' — Dyer v Secretary of State for Employment EAT 183/83.

78. In Radia v Jefferies International Limited UKEAT/008/18, the EAT at §64 provided guidance for tribunals in considering the key issues in rule 76(l)(b) cases:
a. did the complaints, in fact, have no reasonable prospect of success?
b. if so, did the complainant in fact know or appreciate that?
c. If not, ought they, reasonably, to have known or appreciated that?

79. In Sud v Ealing London Borough Council [2013] ICR 39, it was stated a tribunal needs to consider whether the party's conduct of the proceedings was unreasonable and, if so, identify the particular unreasonable conduct along with its effect. The process does not entail a detailed or minute assessment but rather it is sufficient to have a broad-brush approach against the background of all the relevant circumstances.

80. The Tribunal has a wide discretion where an application for costs is made under Rule 76(1)(a). In determining whether to make an order under this ground, it should take into account the 'nature, gravity and effect' of a party's unreasonable conduct (see McPherson v BNP Paribas (London Branch) [2004] ICR 1398). In conducting that assessment, as it was put Mummery LJ at para 41 in Barnsley BC v Yerrakalva [2012] IRLR 78 CA;

> *"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."*

81. However, the Tribunal should look at the matter in the round rather that dissecting various parts of the claim and the costs application and compartmentalising it.

Abuse of process

82. 'Abuse of process' was defined of Lord Bingham in Attorney General v Barker [2000] 1 FLR 759, QBD, and was cited with approval in the Court of Appeal in Scott v Russell [2013] EWCA Civ 1432 at §30,
> *"[,,.] an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process. "*

Causation and calculation of costs

83. 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 Kapoor v Governing Body of Barnhill Community High School UKEAT/0352/13 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.)

84. 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 [2008] UKEAT/0584/06 and Single Homeless Project v Abu UKEAT/0519/12. 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 [2012] ICR 159 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."

85. 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 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 order 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."

86. 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 UKEAT/0584/06 (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.

Discussion and conclusions

87. I address with the question of the first ground of the application: the claimant's conduct was unreasonable, vexatious, or an abuse of the Tribunal process.

88. The background to this application is important, in the sense that the claimant has brought two previous claims and a costs order has been made in respect of the second of those by an Employment Judge sitting in Croydon recently. Since that award for costs in the sum of £10,000 the claimant has acted as follows through the emails:

    a. He has suggested the respondent has hacked his emails,
    b. that they have sent somewhere in the region of approximately 7,000 emails to themselves, and

c. that they have inflected a malware attack on the claimant,
d. that they have photoshopped and forged documents or paid an unknown IT expert to carry out the above.

89. All of those are very serious allegations in respect of which the claimant has failed to advance not an iota of evidence. I unhesitatingly reject the claimant's argument; I am satisfied that the claimant sent of all the emails in question.

90. That is the background to the emails although the respondent prays in aid all of the emails that have been sent (which at the time of the hearing were somewhere in the region of 14,000, possibly more) as demonstrating the continuance of a deliberate, unreasonable campaign.

91. The content of some emails demonstrates that the claimant knew and intended that the sheer volume of emails would cause the respondent considerable costs and distress, and that he sent them in an attempt to secure concessions from the respondent, either in terms of his employment, his claims or to force the respondent to withdraw its applications for the claims to be struck out and or for costs.

92. As set out above, in the background section, he has been repeatedly warned about the consequences of that course. However, the claimant has consistently responded derisively or contemptuously to such warnings about his conduct. In particular, I have had regard to the witness statement of Ms Daw, who is the Fee earner and partner who has the responsibility of managing this claim for the respondent. I was struck by the content of that statement, not only in terms of its detail, but in terms of the nature and content of the claimant's emails in question and his abusive phone calls. Although I have not cross verified each and every email that is referred to in paragraph 15 and onwards in Ms Daw's witness statement, I have looked at a good number and I am satisfied that the account of the emails in the statement that is provided is an accurate one. It is noteworthy, that one consequence of the claimant's abusive calls is that a number of the respondent's employment team have been directed not to answer calls from those without a caller ID. The claimant's conduct has therefore directly affected the ability of others to access legal advice.

93. The nature of the emails that the claimant has sent in the relevant period begins firstly with what the Tribunal (and regrettably many representatives are familiar with): low level abuse directed at the representatives. The claimant suggests, for example, that particular individuals are corrupt or dishonest, that the firm of solicitors instructed by the respondent is the lowest of all solicitors and morally bankrupt.

94. However, the nature and content of emails became increasingly more aggressive and threatening through the period January 2022 and onwards in the lead up to this hearing. In particular on 20 January 2022, he wrote "I write emails as I hate you for what you did". On 27 February, he wrote "next how you vexatious to defend to kill you" [sic]. On 1 March he wrote, "We can damage you further". On 2 March "you have deserved every single email".

95. The target of those threats has increased beyond Ms Daw, to receptionists working for the respondent and to Dr Burke and others.

96. In addition, the claimant has made very serious allegations against the respondent, including allegations of forgery of documents, and, as indicated above in this Judgment, that the respondent's solicitors have either been sending the emails themselves for the purposes of the costs application or have instructed a third party to do so on their behalf, and that they bribed an Employment Judge and Regional Employment Judge and other Employment Judges so as to defeat the claimant's meritorious claims.

97. What is of greatest concern is the evidence that demonstrates that the claimant's conduct was deliberate and was intended to secure concessions from the respondent in the litigation. Such an approach is an abuse of process. In that context, the following emails are of particular concern:

    a. On 24 January 2022, the claimant wrote "I will write as many emails as I want…. until we come to an understanding… my protest goes on…. There will be no emails if you investigate mate".
    b. Later in a separate email on 24th "If I get something I want - I will stop emailing".
    c. On 24 February "I believe direct action of emails v Brachers is appropriate until they play fair".
    d. On 1 March "defending is about making it very difficult for you as I am doing".

98. Equally the claimant has demonstrated in three emails that he believes are allegations against members of the judiciary and of the Bar is good sport, good fun and fair game:

    a. On 10 April "Midgley - complaint into bullying and harassment good banter!".
    b. On 14 April "the game is next time you accept instructions of Webster. I don't like it. I report Burke," (being a reference to a threat to report Dr Burke to the Bar Standards Board.)
    c. On 14 April "we all know you like to play games and I have set up lots for you it is just when I do it".
    d. Lastly, on 4 May "I fully admit that I take high risks to trap you and these bad spots like they do".

99. I have therefore have no hesitation in concluding that the claimant's conduct in sending the emails, and making telephone calls to the respondent, it's counsel and solicitor, was deliberately, knowingly, and intentionally unreasonable, vexatious, and abusive, and amount to an abuse of the Tribunal's process, and therefore the threshold for a costs order has been met.

100. However, I have to consider whether, notwithstanding the threshold has been met, whether I should exercise my discretion to make an award. In particular, I should have regard to the fact that the claimant is a person with a disability

and therefore the extent to which that disability may have contributed in full or in part to the conduct that is the subject of the application.

101. The claimant has produced a lengthy disability impact statement which he emailed to the Tribunal. It includes a disability impact statement, a medical report, and an occupational health report. The documents run to 53 pages. I note from those reports the following matters that are relevant to the issue that I have to resolve:

    a. Firstl, the reports record that in around 2020 that the claimant had a need to speak out where he perceived injustice as a consequence of his feelings that he failed to do so as a child when he suffered abuse.

    b. Secondly, an occupational health report of 5 January 2021 reports that CBT has been highly effectual in reducing his symptoms of PTSD. (I pause at this stage to remind myself that the conditions identified as disabilities that the claimant relies upon in these proceedings are PTSD, anxiety, and depression.)

    c. Thirdly, however, in the same report of 5 January, the consultant noted that from mid December 2020 the claimant was disinhibited in his communication but that as at January 2021 he was fit to return to duties and competent to attend meetings.

102. In summary, the medical records themselves do not extend beyond April 2021 and give no indication that I can see that the conditions of PTSD, anxiety or depression were having a material impact on the claimant's cognitive function to the extent that he could not tell right from wrong or (to use the words of the report itself) that he continued to be 'disinhibited in his communication.' I have carefully considered therefore, the extent to which the evidence demonstrates that the conduct that I have found to be unreasonable and vexatious might be said to be a consequence of the claimant's disability.

103. In that context it is of significance that the majority of the emails that were of greatest concern to me because they included clear expositions that the claimant regarded his excessive email sending as a game or a tactic, and the more serious intimations of violence against the respondent's solicitors, all occur in 2022, beginning in January and escalating through March and April. There is no evidence before me that the cause or main cause of any of those communications was the claimant's disability, and I am satisfied on the balance of probabilities that it was not the cause.

104. In my judgment, it is therefore appropriate for me to exercise my discretion to make an order for costs.

105. For the sake of completeness, I address the second ground relied upon in the application that the claim had no reasonable prospect of success. The respondent argues that not only did it have no prospects of success, but that the claimant knew that it had no prospects, and that in pursuing the he deliberately cause the respondent to incur costs unnecessarily.

106. There is force in Dr Burke's argument, which he developed from his skeleton argument in his oral submissions, that the claimant was in an unusually beneficial position in comparison with an ordinary litigant in person in understanding the limitations and pitfalls of the claim that he sought to pursue. The essential thrust of the argument that led to the claim being struck out was that the claimant sought to bring allegations either which were expressly made in the first or the second claim which had been dismissed and were therefore (a) res judicata or (b) issue estopped because they relied upon facts or arguments that were identified in those claims, or lastly (c) that they relied upon facts that were known to the claimant at the time of the first and second claims and therefore ought to have been included in those claims, with the result that this claim should be struck out under the rule in Henderson v Henderson.

107. None of those matters are simple in terms of facts or law and had this been the first claim where this issue arose, I would certainly hesitate in considering that there was force or substance in the respondent's argument and that in pursuing such a claim the claimant should be exposed to the risk of costs. However, the claimant clearly understood the nature of the issue because it had been raised, considered, and explained in relation to the second claim by Employment Judge Richardson in her decision that followed the preliminary hearing on 3 and 4 March 2021. There had been some prior explanation of the points that were relevant by Employment Mitchell who had listed that hearing, and furthermore the claimant had had the benefit of Dr Burke's skeleton argument in that hearing which set out all of the relevant principles and identified the relevant case law. The claimant had had ample opportunity to consider and reflect upon all of that information.

108. It seems to me there is significant force in the respondent's argument because it is clear from the documents the claimant has produced that he has firstly engaged with them, secondly, that he has to one extent or another understood the principles (albeit he has sought to apply them to support his claim or defeat the respondent's applications). In that context, the claimant has demonstrated that his disability has not prevented him from articulating the points that he wishes to make in connection with those legal principles. (Indeed, part of his discontent with me is that he feels that I did not engage or did not understand the points that he 'clearly' made about those principles, and therefore his view is that I made an incorrect decision in relation to the strike out of this claim). That of course places him in some predicament if he seeks to argue that he did not understand the risk that he ran by pursuing a claim that largely if not entirely reiterated matters from the first and second claims.

109. However, I bear in mind that the claimant's underlying position is that the judicial approach across his claims that have now been struck out was erroneous, that each of the Judges who addressed his claims to one extent or another was either misled or failed to engage with the claimant's arguments, and therefore it was necessary to bring the third claim in order to write the wrong.

110. Nevertheless, I am satisfied on balance that the claimant knew that there was a significant risk that that claim would be treated as being estopped by issue or cause of action estoppel or by the rule in Henderson v Henderson, and when pursuing it he knew that it had no reasonable prospect of success. Certainly, he must have been aware of that from the point that the ET3 was submitted which specified the duplication of the allegations (both factual and legal). In my judgment the threshold for a costs award on the basis of pursuing the claim had no reasonable prospect of success has also been met, and it is appropriate to exercise that discretion for the reasons in this paragraph.

111. That takes me to the sum of costs that should be awarded. The claimant's primary argument

112. The claimant has chosen not to participate in the hearing of this application following the dismissal of his recusal application. That is a choice that he has made but its consequence is that he has not been in a position to tell me anything about his means. That is not to say that there is not evidence of his means in the bundle: I have been provided with bank statements and indeed with an application that the claimant made detailing his job history to the respondent. Those matters are relevant in so far as the claimant has either directly or by implication sought to argue that he remains unable to work and therefore has no means. It is clear from his applications that between 1 April 2019 and 26 March 2020 the claimant was able to work in his professional role as a nurse or a lead practitioner and it was no part of that application that the period where he ceased to work was due to any disability, whether PTSD, anxiety or depression.

113. During evidence at the previous preliminary hearing the claimant indicated that at times he has been able to secure an income of approximately £6,000 gross a month from such work. There is no evidence before me at this stage that his income has reached that level in the recent past, but I do note that there is nothing in the medical evidence that suggests he has been unable to work as a consequence of his disabilities.

114. I turn then to the nature of the sums claimed through the respondent's cost schedule and the extent of the award. The respondent's seeks summary assessment of the limited sum permitted by summary assessment of £20,000 as against a cost schedule of £42,500 rounding up to £51,000 once that is added.

115. The relevant component elements of that cost schedule are best identified as follows:

    a. There is a specific section addressing the volume of emails that Ms Daw and others have had to deal with as a consequence of the claimant's unreasonable behaviour. The sum claimed in respect of that is £3,500 plus VAT amounting approximately 48 hours' work, as I understand the schedule.

b. £6,000 is claimed in respect of the preparation and lodging of the ET3 and
c. Approximately £25,000 in respect of the case management preparing for and attending hearings.

116. I bear in mind that the approach that I must take is not to go through the cost schedule with a finetooth comb, nor do I have to be satisfied that all of the costs were caused by the conduct that was unreasonable. What I am required to do is to stand back to look at the gravity and severity of the conduct in question and apply a broadbrush approach to identify the appropriate award. It seems to me in the circumstances of this case, particularly in the absence of the claimant, some articulation of what it is that has an influence upon my decision may be sensible.

117. In my judgment, the costs of £3,500 that the claimant has caused by his excessive correspondence is certainly to be awarded. Whilst the claimant might argue that he should not have to pay the costs of the respondent's response, again in my judgment the respondent's costs of the litigation from that point onwards were occasioned by the claimant's pursuit of a claim which was destined to fail. The basis on which it would fail was made directly identified in the Grounds of Response and from the point of receipt of that document, the claimant can have no reasonable doubt that res judicata and issue estoppel were the focus of the defence. The basis of that argument was set out in detail in the response, and the claimant would have been able cross refer between the response and the relevant paragraphs of his claim forms to understand the factual basis of the argument. The legal position in respect of those defences had been explained to the claimant in the respondent's counsel's skeleton argument and in the Judgment of EJ Richardson. I am entirely satisfied that the claimant understood what was being argued, was able to assess the argument by reference to the grounds of response and the various claims and therefore to make an informed decision about the prospects of success for claim 1401373/2021. It seems to me that he continued to pursue the claim both because of his unshakeable sense of injustice arising form his perception of how he believed he had been wronged first by the respondent and then by various Employment Judges, and because of his equally unassailable desire to cause the maximum disruption and harm to the respondent and all who represented it. It is unnecessary to seek to apportion the degree to which each of those factors caused the claimant's conduct which in turn caused the costs. I must assess the nature, effect amnd It seems to me in those circumstances that it would be appropriate to award the costs of the general case management the preliminary hearings together with the costs of the claimant's correspondence.

118. Applying a broad brush approach that sum takes me over the threshold because it amounts to around £29,000 rounded to £20,000 which is the limit and so £20,000 is the extent of the costs order that I make.

Employment Judge Midgley
Date: 1 July 2022

Judgment sent to the parties: 1 July 2022

FOR THE TRIBUNAL OFFICE

Note - Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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