RESERVED JUDGMENT

Case No. 2416368/2018
2415427/2018
2416830/2018
2402191/2019

EMPLOYMENT TRIBUNALS

Claimant: Mrs P Day

Respondents:
1. The Bee Hive (NW) Limited
2. Mrs V M Robinson
3. Mr S J Robinson
4. Mr L Robinson

HELD AT: Manchester **ON:** 29 June 2022 and 30 June 2022 (in chambers)

BEFORE: Employment Judge Slater
Mr S Anslow
Ms S Howarth

REPRESENTATION:

Claimant: In person
Respondent: Mr M Davies, solicitor

JUDGMENT

The judgment of the Tribunal is that the claimant is ordered to pay to the respondents £20,000 as a contribution to costs incurred.

REASONS

The costs application

1. Following the issue of the Tribunal's judgment on liability, dismissing all the claimant's claims, the respondents made an application for costs on 13 January 2022. The respondents sought payment of all their costs, to be assessed by detailed assessment, on an indemnity basis. The respondents provided a statement of costs, prior to the hearing, but after the claimant had sent written representations to the Tribunal. The respondents sought the costs set out in the schedule, which came to a grand total of £46,217.51.

2. The respondents' application was 11 pages long and supported by a bundle of 37 pages. The claimant sent written submissions to the Tribunal on 21 June 2022, with an accompanying bundle of 105 pages. Also on 21 June 2022, the respondents sent the Tribunal its statement of costs.

3. The claimant had given some information about her financial means in her written submissions. The judge asked the claimant whether she wanted the Tribunal to take into account her financial means when deciding whether to make a costs order and, if so, the amount of the order (including whether the claimant should be ordered to pay costs to be assessed by detailed assessment). The claimant said she would like her financial means to be taken into account. We, therefore, heard evidence from the claimant about her financial means, given by the claimant answering questions put by the judge. Mr Davies declined the opportunity to cross examine the claimant as to her financial means.

4. Both parties made oral submissions. The claimant also provided the Tribunal with a copy of the Presidential Guidance on General Case Management and copies of a number of authorities, although we were not referred to these other than as mentioned in the claimant's written submissions.

Facts

5. We rely on our judgment on liability sent to the parties on 17 December 2021. References to paragraph numbers are to paragraphs in the reasons for that judgment except where indicated. Since our judgment on liability was only concerned with a small subset of the original claims, many complaints having been struck out or withdrawn prior to the final hearing, it is necessary in these reasons to provide some further information about the history of the claims. We also set out additional relevant information about the claimant and her financial means.

6. This case has a long and complicated history. The claimant presented four claims, with the first being presented on 28 September 2018. All related essentially to the same matter, which was the termination of the claimant's contract with the first respondent by letter dated 13 June 2018, and events which flowed from this. The

"employment" contract, establishing the relationship on the basis of which the complaints to the Tribunal are made, began in January 2018 and ended on 13 June 2018. In these proceedings, following a concession made by the respondents in or around October 2019, the claimant was accepted to be an employee within the definition in the Equality Act 2010 and a "worker" for the Employment Rights Act 1996. The respondents did not accept that she was an employee in the Employment Rights Act sense, and it was not necessary for her to meet that definition for the complaints pursued in this case. When we refer to "employment contract" or "employee" in these reasons, it refers to the contract by which the claimant was an employee in the Equality Act sense and her status as an Equality Act employee, rather than in the Employment Rights Act 1996 sense.

7. The letter dated 13 June 2018 terminated not only the claimant's employment contract but also all working relationships between the respondents and the claimant, Woodcock Ltd (a company of which the claimant and her husband, Rob Day, are directors) and Rob Day. Our judgment on liability contains the history of the working relationships. The claimant and Woodcock Ltd's involvement with the respondents predated the claimant's "employment relationship" with the first respondent. As we noted in paragraph 36, there is a commercial dispute between Woodcock Ltd and the first respondent as to what, if anything, Woodstock Ltd was entitled to be paid for the services that company provided through the claimant and Rob Day. As we noted in that paragraph, issues relating to this commercial dispute are not a matter for this Tribunal. We were told that, following the Tribunal's decision on liability, Woodcock Ltd has obtained a default judgment on a statutory demand for the balance of an invoice to the first respondent. We do not know whether Woodcock Ltd is likely to be paid the amount ordered by the default judgment or whether it will apply and succeed in having the judgment set aside and, if this is done, what the outcome will be of the dispute between Woodcock Ltd and the first respondent. This is not a matter for this Tribunal and we do not consider the actions of Woodcock Ltd in obtaining the judgment to be relevant to our assessment as to whether costs should be ordered to be paid by the claimant.

8. The details of each claim were long and not easy to follow. There was a lot of repetition between the claims. The claimant made complaints under the Equality Act 2010 relying on seven different protected characteristics (sex, race, disability, age, sexual orientation, marriage and philosophical belief), victimisation under the Equality Act, complaints relying on section 111 and 112 Equality Act (instructing, causing or inducing and/or aiding contraventions) and protected disclosure detriments. The claimant thought it was unfair that the first respondent terminated her employment contract without any prior disciplinary process. However, the claimant, having less than two years' service, understood that she was not eligible to claim unfair dismissal and did not seek to do so.

9. The claimant has been a litigant in person throughout these proceedings. However, she is, on the basis of her own evidence, much more informed about legal matters than most litigants in person. She has a law degree. She has maintained, since studying law as an undergraduate, a close interest in legal developments, regularly reading law reports in the Times. She held herself out to the respondents as capable

of providing legal advice on some matters, including in relation to Employment Tribunal proceedings brought against the first respondent, and did so. In this costs hearing, she showed us some of the legal textbooks which she had consulted, including some IDS handbooks. The claimant told us that she had sought legal advice in relation to these claims on a number of occasions. This advice is, of course, privileged so we do not know what advice she received, who gave that advice and we do not know what information she gave to those legal advisers, on the basis of which they gave their advice. We have formed the view that, if the claimant was advised that she had good grounds to pursue her complaints, she either had not given the advisers all relevant information or she was poorly advised. If the latter, we must still consider whether the claimant acted unreasonably. The claimant might have a remedy against those advisers if given negligent advice.

10. There were six preliminary hearings prior to the final hearing. Contrary to what the claimant said in submissions she had been informed, this is not, in our experience, common in preparation for a final hearing. Most cases involving Equality Act and/or protected disclosure complaints have one case management preliminary hearing prior to the final hearing. In complex cases, particularly involving litigants in person, it might take more than one hearing to clarify the claims and issues and/or there could be another preliminary hearing to consider strike out applications or the making of deposit orders or to deal with some preliminary issue. The holding of six preliminary hearings is exceptional.

11. Deposit orders were made in relation to the majority of the claimant's complaints. She paid the deposit in relation to only one of those complaints (the protected disclosure detriment complaints we dealt with at the final hearing) and the other complaints were dismissed following failure to pay the deposits.

12. Although some strike out applications were made, it appears these were withdrawn so the Tribunal did not, in fact, determine any applications to strike out any of the complaints on the grounds that they had no reasonable prospect of success. The Tribunal did not, on its own initiative, consider whether to strike out any complaints on the grounds that they had no reasonable prospect of success and, in our experience, it would be very unusual for the Tribunal to do so in discrimination complaints where, generally, evidence has to be heard before a determination of the merits of the complaints can be made.

13. A summary of the history of the proceedings is as follows.

14. The claimant presented her first claim (2416368/18) on 28 September 2018. She presented her second claim (2415427/18) on 3 October 2018. She presented her third claim (2416830/18) on 13 November 2018.

15. The first case management preliminary hearing took place on 28 February 2019 before Employment Judge Ross. Judge Ross noted that all three claims related to the ending of the working relationship between the claimant and the respondents. She noted that there appeared to be extensive duplication between the three claims. Considerable time was spent trying to identify the claims the claimant wished to bring.

Complaints of direct discrimination, indirect discrimination harassment and public interest disclosure detriment were identified. The claimant was relying on seven protected characteristics at this time: age, sexual orientation, sex, marriage, disability and race and philosophical belief. The claimant confirmed that she was not bringing a complaint of victimisation. In relation to a complaint under section 111 of the Equality Act 2010, the judge noted that the claimant was unable to identify who had instructed another person to contravene the Equality Act in relation to herself or what had been done. A preliminary hearing was listed to deal with what appeared to be a time limit issue. The respondents were invited to write in if they had an application to apply for striking out or the making of deposit order. The respondents did make such applications after the preliminary hearing.

16. It appears that it was agreed, subsequent to the first preliminary hearing, that there was no time limit issue to be considered. The preliminary hearing which had been listed to consider the time limit issue appears to have been converted into a preliminary hearing on 11 July 2019 at which applications for deposit orders were considered by Employment Judge Hoey.

17. The claimant presented her fourth claim (2402191/19) which was against the fourth respondent, Luke Robinson, only, on 4 March 2019.

18. On 28 March 2019, the claimant withdrew her disability discrimination complaint of indirect discrimination relating to thyroid dysfunction. This was the only complaint of disability discrimination made by the claimant.

19. Also on 28 March 2019, the claimant produced a schedule of loss. This claimed over £5 million compensation in total and included loss of financial benefits for 30+ years of Insource contracts (Insource was the trading name of Woodcock Ltd).

20. The second preliminary hearing took place on 11 July 2019 before Employment Judge Hoey. A number of deposit orders were made and a further preliminary hearing was listed to consider the worker status issue. The respondents, at this stage, were denying that the claimant was an employee within the Equality Act sense or a worker as defined in the Employment Rights Act 1996. Employment Judge Hoey recorded that the respondents withdrew the applications to strike out the claims on the grounds of having no reasonable prospect of success so the hearing focused on whether deposit orders should be made. Employment Judge Hoey later considered an application from the claimant under rule 29 to vary or set aside his orders (described by the claimant as an application for “reconsideration” of the deposit orders) and a varied order was sent to the parties on 14 January 2020. We do not, therefore, describe at this point orders which were made but return to these at the appropriate point in our chronology.

21. As noted in the previous paragraph, the claimant made an application for “reconsideration” of the deposit orders on 14 August 2019. She also made an application to strike out the responses to claims 2402191/19 and 2416368/18 and for deposit orders to be made against the respondents.

22. At a case management preliminary hearing on 30 October 2019 before Employment Judge Leach, following the issue of the fourth claim, the judge recorded that the respondents had conceded that the claimant was an Equality Act employee and worker for the purposes of the Employment Rights Act 1996. It was noted that there was no concession that the claimant was an Employment Rights Act employee, but none of the claimant's claims depended on that status, so it was not a matter the Tribunal ever had to determine. The judge refused the claimant's application to strike out the responses. The judge noted, in relation to the claimant's application for deposit orders, that deposit orders could not apply to both parties on the same issues, so the claimant's application for reconsideration of the deposit orders would need to be dealt with by Employment Judge Hoey, before consideration was given to the claimant's own deposit order applications. The judge updated the list of issues and list of allegations and issued updated case management orders. The judge noted that an issue arose as to legal professional privilege, specifically in relation to the involvement of the respondents' representative, Mr Davies, who confirmed to the Tribunal that he was a qualified solicitor. Mr Davies confirmed that the respondents had given disclosure of relevant documents, other than those covered by legal professional privilege. The claimant disputed this. The judge wrote that, if, following the discussions at the case management hearing, the claimant remained of the view that there was further disclosure to be made by the respondents, she should write to the respondents explaining what further disclosure she required, the basis on which she said those documents existed and, where the disclosure was in relation to correspondence between or advice provided by Mr Davies of INHR Ltd, why legal professional privilege did not apply.

23. The judge encouraged the claimant to obtain independent legal advice in relation to the claims she was bringing and the remedy being sought. The judge noted the presence of deposit orders and the possibility of costs orders against the claimant in the event that the claimant did not succeed in her claims. Again, the Tribunal spent considerable time addressing the allegations and issues with the claimant.

24. Employment Judge Hoey considered the claimant's application for "reconsideration" of the deposit orders on the basis of written material, both parties having confirmed that they wished the matters to be considered in chambers. The judge varied his decision, revoking two of the 15 deposit orders he had previously made and reissuing the remaining 13. The two deposit orders he revoked were in relation to unlawful belief harassment and indirect belief discrimination (although the judge commented in relation to both that this was finely balanced). Deposit orders were reissued in relation to: direct discrimination complaints of philosophical belief, marital discrimination, sexual orientation discrimination and age discrimination; harassment complaints relating to age, sexual orientation and race; indirect discrimination complaints relying on race, marriage and sex; and public interest disclosure, in relation to the disclosure relied upon in the claim.

25. The judge commented that he did not accept that the fact the claimant disputed the reason why the respondent issued the termination letter and its contents, process and manner, resulted thereby (by itself) in there being more than little reasonable prospects of success for each of her claims.

26. The judge had refused to order deposits in relation to sex discrimination complaints. He rejected an application by the respondents for "reconsideration" of his decision not to grant deposits in relation to those complaints. He wrote "my view remains that, as the claimant is relying upon gender stereotypes, it cannot be said that there is little reasonable prospect of success and I do not vary that decision."

27. The deposit order in relation to the public interest disclosure complaints was that the deposit should be paid in respect of the contention "that the disclosure relied upon was in the public interest", as expressed in the summary section of the orders. In the fuller explanatory section, Employment Judge Hoey wrote that he found there was little reasonable prospect of success of the claimant "showing that the disclosure was in the public interest given this was a private contractual issue. I considered there to be little reasonable prospects of the claimant being able to show that the legal test for the disclosure being in the public interest had been satisfied". The judge noted that this appeared to be a private matter in the light of the legal test as set out in **Chesterton Global Ltd v Nurmohamed** 2017 IRLR 837 (and considering **Greenfly** UKEAT/359/13). In the dismissal of the claimant's appeal against this deposit order, in the sift process at the EAT, the Honourable Mr Justice Choudhury (President) commented that the reference to the disclosure having been made "reasonably in the public interest" does not set out the words of section 43B of the 1996 Act precisely. He wrote that, in all the circumstances, it could not be said that there was a misdirection in this regard. As the Tribunal explained, the disclosure was about an internal matter and "the public" relied upon all comprised stakeholders in the business. As such, it was unarguably correct to conclude that there was little reasonable prospect of establishing that there was a reasonable belief that the disclosure was in the public interest.

28. Although Employment Judge Hoey's orders contain all four case numbers in the heading, it appears from the record of the next preliminary hearing, with Employment Judge Leach, held on 28 April 2020, and the judgment striking out claims for failure to pay the deposits (with the exception of the deposit identified to relate to the protected disclosure complaint), that the deposit orders applied to complaints contained in the first claim only, case number 2416368/2018.

29. The claimant appealed unsuccessfully against the making of the deposit orders. By letter dated 15 May 2020, President Choudhury dismissed the appeal on the sift. His reasons included the statement: "The claimant's difficulty lies in the inherent weakness of her claims." We have referred above to the President's comments in relation to the deposit ordered as a condition of proceeding with the protected disclosure argument.

30. The claimant was advised of her right to make an application for a hearing under rule 3(10) and she duly made such an application. In an order sent to the parties on 5 January 2021, the Honourable Mr Justice Lavender rejected the appeal, writing that none of the 16 grounds of appeal had any reasonable prospect of success. He wrote:

> "3. All of the claims concerned the respondents' letter of 13 June 2018 terminated the relationship between the respondents and the claimant and her husband and their company. The letter set out what the respondents contended were their reasons for doing so. The reasons given were both sufficient and non-discriminatory reasons for terminating the relationship. The Employment Tribunal was entitled to ask the claimant how she intended to counter the respondents' case and to conclude that her claims had little reasonable prospect of success.
>
> "4. The Employment Tribunal noted in paragraph 37 of its reasons that there were no primary facts which the claimant was offering to prove from which the inferences on which she relied could be drawn. The claimant has identified no such facts in her Grounds of appeal.
>
> "5. It follows that the notice of appeal is so lacking in substance as to be totally without merit."

31. The case had been listed for a final hearing beginning on 28 April 2020. Because of the pandemic, the final hearing was converted to a case management preliminary hearing on what should have been the first day of final hearing. However, Employment Judge Leach, who conducted that hearing, noted that the case would not have been ready to have been heard at a final hearing in any event: a number of case management orders had not been complied with and there remainded areas of dispute between the parties in relation to disclosure and other case management issues.

32. The judge noted that the respondents had applied for further deposit orders, those made by Employment Judge Hoey only relating to claims under case number 2416368/18. Judge Leach listed a further preliminary hearing in relation to the deposit order applications, the claimant having said she would not be comfortable dealing with those applications in writing and wished to speak in response to them.

33. Under the heading "outstanding issues regarding documents and bundles", Judge Leach wrote: "the correspondence between the parties is disheartening." He noted that both parties had claimed to have complied with case management orders relating to disclosure about comparators and each claimed that the other party had not complied. Various matters relating to disclosure, including an issue relating to legal privilege, if the parties had not resolved this, were to be dealt with at the next preliminary hearing. In relation to the hearing bundle, the judge noted that the claimant claimed that, in addition to the 1500 pages referred to by the respondent and shared with her, she had another 3500 pages which she said were relevant and would need to be read and considered by the Tribunal dealing with the final hearing. The judge urged the claimant to consider relevance and whether it would be necessary for the Tribunal to have copies of all these documents to deal with the matter fairly and justly. He referred to the overriding objective and urged the claimant to consider putting together a supplementary bundle of documents with far fewer pages than currently proposed.

34. The judge discussed with the claimant her applications for deposit orders. He recorded that she had applied for deposit orders because, in her view, the evidence disclosed to support the assertion that Luke Robinson had one or more health conditions was weak or non-existent. The judge wrote that this was a matter for the Tribunal to consider at the final hearing, to the extent that it was relevant to any the issues and it was not possible to say that any finding in relation to the health conditions that Luke Robinson may or may not have would make any difference to the success or failure of any the claims brought by the claimant. He commented that the applications were not ones claiming that there were little reasonable prospects of the respondents succeeding with their argument that they did not terminate the claimant's contract because the claimant had made alleged protected disclosures and/or for one of the number of protected characteristic claims she was making. The judge relisted the final hearing for seven days beginning on 13 September 2021.

35. By a judgment sent to the parties on 16 July 2020, complaints subject to a deposit order, in respect of which the claimant had not paid a deposit, were struck out.

36. The next preliminary hearing took place before Employment Judge Leach on 19-20 October 2020. The judge dealt with various disclosure matters. These included dealing with an application made by the claimant for disclosure of correspondence between the respondents and INHR Ltd and other documents relevant to advice provided. The respondents claimed the documents were privileged, relying on legal advice privilege and litigation privilege. The claimant argued that legal privilege did not apply. She accepted that Mr Davies of INHR is, and was at relevant times, a qualified solicitor, registered with the SRA with a current practising certificate. However, she argued that the company is not a firm of solicitors or barristers chambers, but a company in the business of providing HR advice, and the person contracted to provide the advice was INHR Ltd, not Matthew Davies. The judge noted that Mr Davies confirmed that he was a qualified solicitor and had a current practising certificate, was a member of the Law Society and was regulated by the SRA. The judge declined all the applications for disclosure.

37. The judge dealt with the respondent's application for deposit orders. Employment Judge Leach made deposit orders against 49 out of 50 complaints under claims 2, 3 and 4. These included deposit orders against claims which the judge considered were made on the same basis as corresponding claims in claim one and which had been the subject of deposit orders. Deposits were ordered to be paid of £400 for each of the 49 claims, a total of £19,600. None of the deposits were paid so these complaints were struck out by a judgment sent to the parties on 18 January 2021.

38. A further and final case management preliminary hearing was held on 29 March 2021, with the record of this being sent to the parties on 6 April 2021. It had been intended that this would be a one hour hearing, to complete the updated list and other matters once it was clear which complaints the claimant would continue with. However, it appears the hearing was rather lengthier, dealing with more matters than originally anticipated. In addition to dealing with the list of issues and readiness for hearing, Employment Judge Leach dealt with an application by the claimant to review his decision on the disclosure of some correspondence between INHR and the

respondents and to consider a further application made by the claimant for the disclosure of documents on the basis that unambiguous impropriety on the part of the respondents prevented them relying on the protection of privilege. The judge rejected the application for the lifting of "without prejudice" privilege, commenting that the concern raised came nowhere near a concern that would give rise to the lifting of privilege on the basis of unambiguous impropriety.

39. In the claimant's application for the judge to reconsider his decision that legal professional privilege did not apply to correspondence between the respondents and INHR Ltd, the claimant alleged criminal conduct on the part of Mr Davies. The claimant alleged that Mr Davies had been engaged in criminal conduct in providing legal advice (prior to a regulatory change affecting solicitors which came in on 25 November 2019) and, because of this, the respondent should not be entitled to benefit from the protection of legal privilege stopping the disclosure of otherwise disclosable documents. Employment Judge Leach wrote that, as an allegation of criminal conduct had been made, he decided it was not something he could ignore and he wished to provide Mr Davies with a right of reply, which is why he was prepared to reconsider his previous case management decision. We deal with the arguments and decision in relation to this matter in some detail because a similar issue arose at the costs hearing in relation to whether a costs order could be made in respect of charges made by INHR Ltd for advice given by Mr Davies. The claimant's arguments were that the criminal conduct was the act of claiming that legal advice given by Mr Davies prior to 25 November 2019, was protected by legal advice privilege when he was not entitled to make that claim. The claimant argued that, under the regulatory requirements which applied before 25 November 2019: INHR Ltd was not a party entitled to provide that advice because they were not a firm of solicitors regulated by the SRA; Mr Davies was not registered as in practice on his own account. You could only provide legal advice to which privilege would apply if he was a qualified legal or natural person who was capable and regulated with the SRA as trading as a sole practitioner or through a firm regulated by the SRA; and the SRA rules relating to in-house lawyers prior to 25 November 2019 prohibited Mr Davies from acting for and giving legal advice to external clients unconnected with the organisation employing him. The judge noted that the respondents sought advice from Mr Davies because he is a solicitor. Mr Davies is a solicitor regulated by the SRA with a practising certificate. If, as the claimant asserted, Mr Davies/INHR Ltd were unregulated before 25 November 2019 then that may or may not be a matter in which the SRA become involved. However, it did not prevent the respondents in this case, who retained and relied on Mr Davies as a solicitor, from relying on legal professional privilege.

40. On 19 April 2021, the claimant wrote to the Tribunal with an 8 page application asking Employment Judge Leach to reconsider his decision in relation to illegality/legal advice privilege sent to the parties on 6 April 2021. The judge refused to consider the claimant's application for disclosure a third time, for reasons given in a letter sent to the parties on 28 May 2021.

41. The length of the final hearing was reduced to 4 days, with the agreement of the parties. Employment Judge Leach varied the case management order about the provision of witness statements, to give a deadline of 30 July 2021. He also gave

detailed orders about the bundle of documents for the final hearing. Part 3 of this was to be for documents which the claimant wanted included, which the respondent had not agreed to. The order in relation to all parts of the bundle was that both parties should have an indexed and paginated bundle of documents by no later than 25 June 2021.

42. On 30 July 2021, at 12.48, the claimant emailed the respondent, writing:

> "Because of my disability I will not be able to exchange witness statements at 4 p.m. this afternoon.
>
> "I will try to be in a position to exchange witness statements at 4 p.m. on Monday afternoon if I can overcome the problems caused by my disability. I will update you on Monday morning.
>
> "Please support my request and do not attempt to threaten me or my husband in any way as I'm afraid that you will based on my past experience."

43. The email did not specify the disability which was causing the claimant difficulties, or how this had prevented her completing her witness statement by 30 July 2021.

44. Mr Davies replied, writing that the respondents were ready to exchange witness statements that afternoon. He denied ever unlawfully or unreasonably "threatening" the claimant or her husband. He proposed a final extension of time with statements to be exchanged at 1 p.m. on Friday 6 August 2021. He wrote that, if the claimant should not be ready by then, he was instructed that the claimant would need to apply to the Tribunal for any further extension, which might be opposed by the respondent.

45. The claimant replied on 30 July, agreeing to the proposal for exchange on 6 August.

46. On 6 August 2021, the claimant wrote to Mr Davies at 7.54 a.m. as follows:

> "Unless we can agree between ourselves a further extension to the time we agreed to exchange witness statements, then I will have to apply to the Tribunal for an extension of time because, due to my disability, I still have 2 small sections to write and then reference to the documentary bundle evidence. My disability means that my concentration cannot be sustained for long periods and if pushed results in a relapse, thereby worsening my condition and that triggers cycles of SANTs."

47. Mr Davies replied on 6 August 2021, expressing sympathy if the process was causing the claimant difficulties, but writing that his instructions were not to agree to any further extension of time for exchange of statements. He raised concern that the health problems the claimant referred to could impact on the final hearing. He wrote that he had annual leave booked before the final hearing and preparation needed to be undertaken following exchange and review of statements, and a further extension risked prejudice.

48. The respondent made an application to the Tribunal dated 19 August 2021 for an unless order, for the claimant to be required to exchange witness statements at the earliest date the Tribunal considered reasonable. The claimant had not, between 6 August and 19 August, made any application to the Tribunal for an extension of time to serve her witness statements.

49. The claimant responded to the respondent's application on 20 August 2021. She wrote that one of her two disabilities (not specified in her email) causes her health issues, lack of concentration and suicidal thoughts. She wrote:

> "One of my two disabilities has caused me a specific health problem in relation to the writing of my witness statement that could not have been foreseen until I started writing it after the parties exchanged their evidence bundles at the end of June and that will be part of my witness statement."

The claimant requested to be given until 4 p.m. on Monday 30 August to complete and exchange her witness statement. The claimant did not specify the health problem that she asserted could not have been foreseen until she started writing the statement.

50. In our hearing on liability, the claimant requested extra time for her to provide written submissions because of tinnitus, which she said slowed her down. The claimant did not give us any other information about any conditions which may be disabilities and which would affect her ability to complete work to deadlines.

51. On 1 September 2021, an unless order made by Employment Judge Leach was sent to the claimant, requiring her to provide her witness statements by 6 September 2021. The claimant served her witness statements in compliance with the unless order so her claims were not struck out.

52. Although the claimant had written in her response to the application for an unless order that the parties had exchanged evidence bundles at the end of June, and the order had been for bundles to be exchanged by 25 June 2021, the claimant unexpectedly attempted to serve on the respondents a further bundle of documents very shortly before the hearing. This was delivered to an address near to Mr Davies when delivery could not be made to his address. He was not able to read the documents in this bundle until during the course of the final hearing. Mr Davies told us that the respondents were not seeking a postponement of the final hearing because of this late serving of documents.

53. The final hearing began on 13 September 2021, as scheduled. As noted in paragraph 7 and 8 of our judgment on liability, because of the pandemic, the parties were informed that the hearing would take place by video conference. The claimant objected to this so, on the first day of the hearing, time was spent dealing with how the remainder of the hearing should proceed. The claimant objected to Mrs Robinson being allowed to give her evidence by video, although she accepted that Mrs Robinson has the condition of sarcoidosis, an autoimmune disorder, which affects her respiratory

system. For reasons set out at paragraph 9 of that judgment, we decided that Mrs Robinson should be allowed to attend remotely.

54. For reasons explained in our judgment on liability, we did not have time to hear oral submissions in the four days allotted for the final hearing and we decided to have written submissions from the parties.

55. Following the close of evidence, the claimant made applications to admit new evidence and strike out allegations, particular evidence from the respondent and the responses. All these applications were refused, as set out in paragraphs 14 to 21 of our judgment on liability.

56. On 29 June 2018, Steve Robinson, identifying himself as company director for the Bee Hive, wrote to the directors of Woodcock Ltd, (who were the claimant and her husband), with a without prejudice offer of £6000 for early settlement of all current, potential and future claims either party may have against the other. There was no response to this offer.

57. On 22 January 2020, a without prejudice save as to costs offer was made on behalf of the respondents to the claimant, offering payment of £15,000 in settlement of all current and potential claims either party may have against the other including all claims and potential claims by the claimant's fellow director and their companies. This was expressed to include proceedings and investigations in respect of potential national minimum wage breach. There was no response to this offer.

58. There were, as detailed in the respondents' costs application, a considerable number of costs warnings issued by the respondents from June 2018 until September 2021, a few days before the start of the final hearing. The June 2018 warning was contained in Steve Robinson's letter of 29 June 2018 and was addressed to the directors of Woodcock Limited and related to seeking costs if the respondents applied to court for relief, following the statutory demand issued by Woodcock Limited. The costs warning in the letter containing the offer made on 22 June 2020 was addressed specifically to the claimant. We have not seen copies of all other costs warnings.

The claimant's financial means

59. In paragraph 61 of her written submissions, the claimant gave some information as to her ability to pay. She confirmed this information to be correct when giving oral evidence and gave some further evidence in answer to the judge's questions. Mr Davies did not challenge her evidence about financial means in cross examination.

60. On the basis of the claimant's evidence, we find the following. The claimant is not currently employed. Her income is a pension of just over £200 per month. She is now financially dependent on her husband. Due to ill health, the claimant does not anticipate being able to work again. The claimant describes the condition preventing her from working in her submissions as an incurable debilitating disability (without identifying the condition), but the Tribunal has not had to determine whether the claimant has a disability and we have seen no medical evidence, so make no finding

as to whether the claimant is disabled within the meaning in the Equality Act 2010. The claimant is 65 years old. The claimant has personal ISA savings of £30,000. The claimant has no other substantial savings. There is approximately £3000 in a joint account used by the claimant and her husband to pay bills. The claimant lives in a house owned by her husband. The house has always been owned by her husband. The claimant has a Ford Fiesta car which is approximately 13 years old. She has no other assets of substantial value. The claimant is a director and shareholder of Woodcock Ltd. Woodcock Ltd has obtained a default judgment against the first respondent for £23,789.55 plus court fees.

The costs incurred by the respondents

61. The respondents engaged INHR Limited to provide them with representation by Matthew Davies before and at the preliminary and final hearings in this case. Michelle Davies also attended some hearings. Both Matthew Davies and Michelle Davies are solicitors. Matthew Davies holds a practising certificate and is regulated personally by the SRA. We did not hear whether Michelle Davies holds a practising certificate but we note that Companies House records describe her as a non-practising solicitor, which suggests that she does not. Matthew Davies and Michelle Davies are directors and shareholders of INHR Ltd. INHR Ltd provides human resources functions. INHR Ltd is not an SRA regulated business.

62. Vanessa and Steve Robinson are personally liable for the fees of INHR Ltd, although Mr Davies has been representing all the respondents. We accept that those fees are as set out in the statement of costs, signed by Mr Davies to confirm that the costs do not exceed the costs which the respondents are liable to pay in respect of the work covered by the statement. This is a total of £46,217.51. We note that costs are calculated on the basis of discounted rates agreed for Matthew Davies of £55 per hour and for Michelle Davies of £55 per hour or £30 per hour in respect of certain work.

Submissions

63. We do not seek to set out or summarise the written submissions made by the parties, which may be read if required.

64. Both parties made oral submissions. With the agreement of the parties, they were to be limited to a maximum of one hour each, subject to the claimant needing breaks (which would not count towards her time limit) if she suffered from difficulties caused by disability. The claimant was to let the Tribunal know if she needed to take a break. In the event, the claimant completed an hour of oral submissions without needing a break. Mr Davies took substantially less than one hour in oral submissions. Mr Davies made his submissions in the morning and the claimant made her submissions after the one hour lunch break.

65. Mr Davies, on behalf of the respondents made the following points in oral submissions. The respondents did not seek apportionment of costs between them; this would be too complex. The claimant's conduct throughout had been vexatious and unreasonable. The claims had no reasonable prospect of success. There were a

number of breaches of case management orders. The claimant started with 70 claims. The claims were entirely misconceived. There was no evidence to support the Equality Act claims. The claimant relied on an unreliable witness statement in her husband's name which the Tribunal found she had probably drafted. The respondent had made offers in June 2018 (£6000) and January 2020 (£15,000) to which the claimant did not respond. In seeking more than £5 million compensation, she obstructed any realistic attempt to settle her claims. There were at least 13 written costs warnings by the respondent. A number specified that indemnity costs would be sought. The claimant was advised about the possibility of costs by Employment Judge Leach on one occasion. Employment Judge Leach preserved two of the cases pending cost applications although all the claims had been struck out. The claimant continued with her protected disclosure complaint after paying a £500 deposit. This was ordered for lack of reasonable prospect of success in establishing public interest. The claimant lost this claim. It was unreasonable to continue with this and the deposit should be paid to the respondents. There have been eight hearings including this one. The claims were unreasonably convoluted, confusing and complex. 65 deposits were ordered. The claimant vigorously resisted all applications but only paid one deposit.

66. Mr Davies submitted that the process had been characterised by challenges by the claimant, even after issues had been determined. The respondents had made the concession on Equality Act employee and worker status after only one preliminary hearing, within five months of the fourth claim being issued. Employment Judge Leach dealt with the legal status issue twice (pages 231 and 269 of the final hearing bundle). Despite that, the claimant still brought challenges about this. Employment Judge Leach had found on two occasions that legal privilege applied. Mr Davies said he was a qualified solicitor holding a practising certificate. The company is an HR consultancy. He submitted that he fell within the definition of a legal representative in rule 74. The status of INHR was not relevant. This had been determined at two preliminary hearings.

67. Mr Davies submitted that, when deposit orders were considered, the Tribunal would give the benefit of the doubt to the claimant that there would be evidence in support of her claims. In the event, the claimant's only other evidence was the witness statement for her husband which she probably wrote herself.

68. Mr Davies submitted that case management orders were breached by the claimant. An unless order had to be obtained for her to provide her witness statements. She overran the bundle deadline. She did not comply with the order about comparator information.

69. The respondents submitted that all their costs were reasonable. The hourly rates were exceptionally low compared to rates allowed in the detailed guide for assessment. Indemnity costs could be awarded where the case was out of the norm. Mr Davies submitted that this was such a case. He referred to the following legal cases: **Excelsior Commercial & Industrial Holding Ltd v Salisbury Hamer Aspden & Johnson** [2002] EWCA Civ 879; **Balmoral Group Ltd v Borealis (UK) Ltd** [2006] EWHC 2531 (Comm); and **Suez Fortune Investment Ltd v Talbot Underwriting Ltd** [2019] EWHC 3300 (Comm), in relation to when indemnity costs may be appropriate.

Mr Davies submitted that all the respondents' costs should be paid on an indemnity basis because the claimant had exaggerated, brought misconceived claims and behaved unreasonably. She had breached case management orders, failed to engage in attempts to resolve the dispute, brought repeated challenges and drafted her husband's witness statement. She had made unfounded allegations of dishonesty, perjury and impropriety against the respondents and Mr Davies.

70. The claimant made the following oral submissions. Her claims had been screened by the Tribunal when presented and at rule 26 stage and at preliminary hearings for no reasonable prospect of success. None had been struck out for no reasonable prospect of success. None of the judges who screened the claims said they had no reasonable prospect of success. The respondent made two comprehensive applications to strike out. Employment Judges Hoey and Leach did not deem any of her claims to have been vexatious, abusive or unreasonable. This has been litigated once by two Employment Judges. If her claims had no reasonable prospect of success, they would have been struck out.

71. The only breach of a case management order was in relation to witness statements. That was due to her health. The claimant asserted that she had met deadlines in relation to the hard copy bundle. She asserted that she had complied with the order to provide a separate bundle: she was told to physically bring additional documents to the first day of the hearing, which she did.

72. The claimant said she took professional legal advice before beginning her claims and on the basis of this crafted her claims. She took advice from legal helplines and read relevant sections of books.

73. Costs warnings were made to her company and not to her. Any offer to settle was not to settle her Employment Tribunal claim; the respondents were denying that she was an employee.

74. The claimant said she respected the deposit orders and did not run with any of the claims in respect of which orders were made other than one which was integral to the protected disclosure complaints.

75. The claimant said she had been advised that it was potentially fraud that the respondent had not paid her holiday pay, notice pay or for 13 days she worked in June.

76. The claimant disputed that she challenged almost everything. The reconsideration to Employment Judge Hoey was successful. She asserted that she had run a fairly normal case in terms of process and conduct. She had not unreasonably wasted the respondents' costs. She asserted that she had been assured by others that it was normal to have this number of preliminary hearings. Two had been triggered by the respondent and two had been triggered by her because of documents.

77. The claimant asserted that, before November 2019, a non-SRA regulated business could not sell the services of an SRA regulated solicitor. She said she had checked this with the SRA and the Law Society. She did not refers to any specific

provisions. She asserted that any solicitor wanting to legally represent a party in the senior courts had to be personally registered with the SRA as a practitioner solicitor and practice as sole earner. She submitted that INHR was not SRA regulated. To have rights of audience, they had to deliver through an SRA regulated business, otherwise this was a criminal offence. Otherwise, it was only an in-house solicitor of their employer. Mr Davies was not this. He gave advice to the respondent, not to his employer. The claimant asserted that the law changed in November 2019 and, after that, solicitors could practice on the same basis as barristers as freelance sole practitioners. Mr Davies did not do this, providing his services through INHR. The respondent could not be legally represented by INHR. The respondents could only claim an hourly rate as preparation time and not costs.

78. In reply, Mr Davies submitted that all the costs warnings issued on behalf of the respondents, once they had presented responses to the claims, were personal and not to Woodcock Ltd. Mr Davies that he did not believe there had been any holiday pay claims brought. Mr Davies said he was not aware of any issue that would not allow costs to be claimed. The issue was exhaustively dealt with in two preliminary hearings.

The Law

79. Rule 76(1) of the Employment Tribunals (Rules of Procedure) 2013 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 have been conducted; or
>
> (b) any claim or response has no reasonable prospect of success; or
>
> (c) [not relevant]."

80. In accordance with rule 75(1)(a), a costs order is an order to make a payment to a party in respect of costs that the receiving party has incurred while legally represented or while represented by a lay representative.

81. "Costs" are defined in rule 74(1) as "fees, charges, disbursement or expenses incurred by or on behalf of the receiving party (including expenses that witnesses incur for the purpose of, or in connection with, attendance at a Tribunal hearing).

82. Rule 74(2) defines legally represented in England and Wales as meaning having the assistance of a person (including where that person is the receiving party's employee) who has a right of audience in relation to any class of proceedings in any part of the senior courts of England and Wales, or all proceedings and county courts or magistrates' courts.

83. Rule 78 provides that a costs order may 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. Alternatively, a costs order may 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. Costs awarded by detailed assessment may exceed £20,000.

84. In accordance with rules for detailed assessment, costs may be awarded on a standard basis or an indemnity basis. On the standard basis, doubts on the reasonableness and proportionality of costs are resolved in favour of the paying party, whilst the indemnity basis favours the receiving party.

85. Rule 84 provides that, 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.

86. The claimant did not identify, in her written or oral submissions, the legal provisions on which she relied for her submissions that a costs order cannot be made for the fees to be paid to INHR Limited by the respondents as INHR Limited is not authorised by the SRA to provide Mr Davies' services. We have, however, looked at SRA guidance and the Legal Services Act 2007, and explanatory notes to that Act. Based on these, the general current position in relation to a non-SRA regulated organisation selling the services of a solicitor to external clients appears to us to be as follows. The solicitor can provide any form of legal services with certain exceptions. The only exception which, potentially, may appear relevant is the provision of reserved legal services to the public. Reserved legal services are defined in section 12 of the 2007 Act. The two types of service in this definition which, potentially, might appear relevant are the exercise of a right of audience; and the conduct of litigation. Each of these are defined further in Schedule 2 to that Act. Both relate to courts in England and Wales. The Employment Tribunal is not a court. We understand, therefore, that appearing as an advocate in the Employment Tribunal and acting in relation to proceedings brought in the Employment Tribunal are not reserved legal services. Our understanding of the relevant law is, therefore, that a non-SRA regulated organisation is entitled to sell to the public the services of a solicitor to conduct Employment Tribunal proceedings, both preparation and advocacy.

87. We have not considered the law in relation to the provision of a solicitor's services to the public by a non SRA regulated organisation prior to November 2019 for reasons given in our conclusions.

Conclusions

<u>Whether the criteria are met for the Tribunal to have the power to make a costs order</u>

88. We consider that, at its heart, this case was about a commercial dispute, in relation to which the Tribunal has no jurisdiction. The claimant's real complaint was not about the termination of the low value, part-time HR role she had taken with the first respondent from January 2018. It was about the termination of all working relationships between Woodcock Ltd, the claimant and the respondents. It was the loss of the income stream which the claimant had anticipated, via Woodstock Ltd, for 30 years or so, from the respondents, viewed as a means of funding the claimant's retirement, and the unfairness, in her view, of terminating all working arrangements, that was at the heart of her complaints. The schedule of loss from the claimant supports this view. If the complaints had, in reality, been about the ending of the "employment" contract, the schedule of loss would have been very much more modest in its aspirations. In our view, the claimant used whatever type of complaints she could find in the Employment Tribunal's jurisdiction to put pressure on the respondents, rather than bringing complaints in the Employment Tribunal because of a genuine view that she had suffered discrimination contrary to the Equality Act 2010. The use of so many types of discrimination complaints in her claims (until many were struck out for failure to pay deposits) supports this view. We consider it highly unlikely that the claimant ever, in reality, thought that the respondents, by ending her "employment" contract, had discriminated against her because of, or for reasons related to, all those protected characteristics.

89. The claimant suggests that, because the Tribunal did not strike out any complaints, on its own initiative, or on the application of the respondent, on the grounds of having no reasonable prospect of success, this means that her complaints which were pursued to the final hearing did have a reasonable prospect of success. We do not agree with this analysis. The bar is high for striking out complaints of discrimination at a preliminary stage and the Tribunal must take the claimant's case at its highest, assuming that they will be able to prove the facts they assert. As we previously noted, the respondents withdrew their strike out applications so the Tribunal did not decide on these applications and it would be very unusual for the Tribunal to consider striking out discrimination complaints on its own initiative. Even if a strike out application is heard and a decision taken not to strike out a claim, the fact that a claim has not been struck out as having no reasonable prospect of success does not mean that the issue has been litigated and the Tribunal cannot decide, in response to a costs application, that the claim had no reasonable prospect of success or that the claimant was unreasonable in the bringing of those proceedings. The Tribunal does not have access to all the material available to the parties at the time of considering such applications. The claimant can be expected to know whether they have material from which they could invite the Tribunal to draw inferences of discrimination, although we recognise that some such material may arise from evidence given by respondents' witnesses.

90. We conclude that the Equality Act complaints and the protected disclosure complaints had no reasonable prospect of success. As explained in our decision on liability, the claimant did not have material from which the Tribunal could conclude that there was unlawful discrimination. The "disclosure" related to private matters and the claimant could not reasonably have believed that the disclosure was in the public interest; a necessary component of a successful protected disclosure detriment claim.

91. We conclude that the claimant knew, or ought reasonably to have known, from the outset of proceedings, that all, or the great majority of her complaints, never had a real prospect of success. She had sufficient legal knowledge at the start to realise this, and the position should have become even more clear to her as judges spelt out, at preliminary hearings, what would have to be proved to succeed in the complaints. The claimant knew, or should have known, from the start, that there was a lack of evidence from which inferences could be drawn of discrimination. There was nothing which could reasonably have led the claimant to conclude that her treatment was because of, or related to, one or more of the protected characteristics on which she relied.

92. The position in relation to the protected disclosure detriment complaints is perhaps more complicated, so we are less confident that the claimant would have known from the outset that these complaints had no reasonable prospect of success. However, the claimant was aware of the necessary components of a successful protected disclosure detriment complaint from, at the latest, the preliminary hearing before Employment Judge Ross in February 2019; the judge set out clearly the requirement for reasonable belief that the disclosures were made in the public interest in Appendix B to the record of that hearing. From this point on, we conclude that the claimant knew, or ought reasonably to have known, that the public interest disclosure detriment complaints had no reasonable prospect of success. The claimant was ordered to pay a deposit as a condition of continuing with the argument that she had a reasonable belief that disclosures were made in the public interest. The weakness of the protected disclosure complaints was identified by Employment Judge Hoey in making that deposit order in July 2019, and confirmed in January 2020. Two judges in the EAT upheld that deposit order. Despite this, the claimant persisted in pursuing her protected disclosure detriment complaints to the final hearing in September 2021.

93. We conclude that the claimant acted unreasonably in bringing and continuing to pursue the proceedings.

94. In addition, we conclude that the claimant acted unreasonably in the way the proceedings were conducted in relation to the following matters:

94.1. Raising for a third time, by her application for reconsideration dated 19 April 2021, (see paragraph 40 above) the matter of legal privilege which had already been dealt with on two occasions and then raising the same issue at this costs hearing about Mr Davies/InHR Ltd in relation to costs as had been determined in the context of the applications for disclosure.

94.2. Failing to comply with the case management order to exchange witness statements on 30 July 2021; not seeking agreement from the respondent to an extension of time until only a few hours before the deadline; not complying with the agreed extension; not making an application to the Tribunal for an extension of time; and not providing her witness statements until subject to an unless order requiring her to provide it by 6 September 2021, only a week before the start of the final hearing (see paragraphs 41- 50 above).

94.3. Providing a further supplementary bundle of documents to the respondents only shortly before the hearing, although the deadline for bundles was 25 June 2021 and the claimant had said in her response to the application for the unless order that bundles had been exchanged by the end of June (see paragraph 52 above).

94.4. Providing a wholly unrealistic schedule of loss (see paragraph 19).

94.5. Drafting all or large parts of Rob Day's witness statement (see paragraph 31 of our judgment on liability).

94.6. Wasting time in the final hearing by making an unmeritorious application for Vanessa Robinson to give evidence in person at the Tribunal, rather than remotely, during high levels of COVID-19, despite accepting that Mrs Robinson has sarcoidosis, which affects her respiratory system (see paragraphs 8-9 of our judgment on liability).

94.7. Making unnecessary and unmeritorious applications after the close of evidence (see paragraphs 14-21 of our judgment on liability).

95. This may not be an exhaustive list of the ways in which the claimant acted unreasonably in the conducting of proceedings. However, it is not necessary, and would not be a proportionate use of the Tribunal's time, to examine in any more detail the conduct of the case and evaluate the reasonableness of the claimant's actions at any particular points. We do not rely on any conduct as being unreasonable, other than as specifically identified in these reasons, in reaching our decision on costs.

96. The respondents asserted that the claimant was repeatedly in breach of case management orders. We have referred to breaches of orders relating to witness statements and bundles above. If there were other breaches, we have not easily been able to identify them and we do not rely on any breaches of case management orders by the claimant other than the specific ones mentioned above.

97. The lengthy and complex way the claimant drafted her details of claim in four claim forms, and the length and complexity of other documents, including her witness statement and submissions, increased the time the respondents' representative had to spend on the matter, increasing the respondents' costs. The length and complexity was, in our view, unnecessary, bringing in many matters not relevant to the issues the Tribunal had to decide. Having regard to the claimant's status as a litigant in person, albeit one with much greater legal knowledge that most litigants in person, we decided not to categorise this as unreasonable conduct of proceedings and do not rely on it in making the decision to award costs.

98. In relation to the protected disclosure detriment complaints, the claimant lost at the final hearing for substantially the same reason as the deposit was ordered i.e. that she did not reasonably believe that the disclosure was in the public interest. In accordance with rule 39(5)(a), the claimant is treated as having acted unreasonably in pursuing the argument that she made protected disclosures, the contrary not having been

shown. The deposit of £500 is, therefore, to be paid to the respondents in accordance with rule 39(5)(b). This counts towards settlement of the overall costs order made by the Tribunal, in accordance with rule 39(6).

99. We conclude that the circumstances exist for us to have power to make a costs order against the claimant. The rules give us a discretion as to whether to make an order and, if so, how much this should be. We have power to award up to £20,000 of costs without detailed assessment and power to order all or a proportion of costs to be awarded, the amount of the costs to be subject to detailed assessment. If we order assessment, we may decide this should be on a standard or, exceptionally, indemnity basis.

Whether costs can be awarded in respect of the fees of INHR Limited for the services of Mr Davies

100. The claimant has argued that no costs award can be made because INHR Limited is not regulated by the SRA. She argued this was the case before November 2019, when some change was brought in, and after November 2019.

101. Employment Judge Leach twice considered the argument, in relation to disclosure of documents said to be subject to legal privilege, in relation to the position prior to the change in November 2019. The orders sent to the parties on 6 April 2021 set out the judge's reasons for dismissing the claimant's arguments. Although the context was different, being in relation to a disclosure application, rather than a costs application, as here, the claimant's arguments were the same. We consider, therefore, that the matter has been dealt with in relation to the situation prior to November 2019 and it would not be appropriate for us to re-open this issue. In any event, the larger part of costs incurred has been after November 2019, so it would not affect the decision we reach as to the amount of costs to be awarded if we had disregarded costs incurred prior to the change in November 2019.

102. In relation to the position after November 2019, we conclude that there is no bar to a costs order on the basis that INHR Ltd is not a company regulated by the SRA.

103. The respondents had the assistance of Matthew Davies, who is a person, being a solicitor holding a practising certificate, who has the right of audience in relation to any class of proceedings in any part of the Senior Courts of England and Wales, or all proceedings in county courts or magistrates' courts. They were, therefore, "legally represented" within the definition in rule 74 of the Employment Tribunals Rules of Procedure 2013. A costs award could, therefore, be made.

104. It is unnecessary for us to decide whether it would have made a difference to the respondents' ability to obtain a costs order if INHR Ltd had been acting unlawfully in selling the services of Matthew Davies to the respondents and we do not do so. We have concluded that, on the basis of the current law, INHR Ltd was not acting unlawfully. We set out our understanding of the current legal position in paragraph 86 above. INHR Ltd was not selling reserved legal services to the respondents. They did not, therefore, have to be regulated by the SRA.

105. We conclude that there is no bar to the respondents seeking a costs order in respect of costs they are liable to pay to INHR Ltd for the services of Matthew Davies in relation to this case.

Our decision about awarding costs

106. We have concluded that the criteria are met for the Tribunal to have power to make a costs award for the claimant to pay costs incurred by the respondents. We must now consider whether to exercise our discretion to make an award and, if so, how much this should be.

107. We have decided it is appropriate to take into account the claimant's financial means in deciding whether to make an order and in deciding the amount of the order. The claimant has sufficient financial means that an order may be made and for a substantial order to be made.

108. We have concluded that it is appropriate to make a costs order in this case and that this order should be substantial to reflect the unreasonableness of the claimant in bringing and conducting the proceedings when she knew, or ought reasonably to have known, that all, or the great majority of her complaints, had no reasonable prospect of success, as well as the other unreasonable conduct we have identified. Through her unreasonable actions, the respondents have been put to great financial cost in fees for representation by Mr Davies, although the hourly rate charged was, we note, discounted and very modest by comparison with most legal fees. There have been other serious, non-financial, effects on the respondents of the claimant's actions in bringing and pursuing her complaints but we do not take the non-financial effects into account in determining the amount that the claimant should be ordered to pay.

109. We have considered carefully the respondents' application for all their costs to be awarded, subject to a detailed assessment, on an indemnity basis. The lack of merit in the complaints brought by the claimant and the knowledge she had about this, or should reasonably have had about this, together with the other unreasonable conduct, could potentially have given the Tribunal grounds for making such an award. However, taking account of the financial means of the claimant, we have concluded that an order for the claimant to pay all the costs, subject to detailed assessment, on an indemnity basis would not be appropriate. The only substantial asset the claimant has is her £30,000 ISA, her pension is very modest and she has little, if any, prospect, of increasing her income in the future. We leave aside the very uncertain possibility that, through Woodcock Ltd, the claimant might obtain funds from the first respondent. In the circumstances, we have concluded that an award of £20,000 damages, the maximum the Tribunal can award without assessment, would be an appropriate award. We recognise, and regret, that this will leave the respondents considerably out of pocket, but consider that the decision we have reached is an exercise of our discretion which is fair and appropriate, having regard to the claimant's financial means.

Employment Judge Slater
Date: 5 July 2022

RESERVED JUDGMENT & REASONS
SENT TO THE PARTIES ON 8 JULY 2022

FOR THE TRIBUNAL OFFICE

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