EMPLOYMENT TRIBUNALS

Claimant: Dr Leary-Owhin

Respondent: London South Bank University

Heard at: London South **On: 21 and 22 September 2022 (and in Chambers 7 October 2022)**

Before: Employment Judge Khalil sitting with panel members
Mr R Shaw
Mr K Murphy

Appearances

For the claimant: in person
For the respondent: Ms Ahmad, Counsel

RESERVED JUDGMENT ON COSTS

Unanimous decision

The respondent's application for a Costs Order under Rule 76 is well founded. A Costs Order is made of 72 % of the respondent's overall costs (of £241,141) capped to £174,141 subject to detailed assessment in the County Court.

Reasons

Claims, appearances and documents

1. This was a Costs application by the respondent under Rule 76 (1) (a) and (b) following the dismissal of all of the claimant's claims in its Judgment sent to the parties on 16 May 2022.

2. The claimant appeared in person as he had at the Liability Hearing. The respondent was represented by Ms Ahmad, Counsel, who had also represented the respondent at the Liability Hearing.

3. The Tribunal had before it the respondent's written application for costs dated 13 June 2022, a Bundle of documents comprising 309 pages, a supplementary Bundle containing the claimants 50 additional documents, the claimant's statement of means and the claimant's written response to the respondent's costs application dated 6 September 2022. In additional a document was submitted by the respondent containing an article by the Sunday Telegraph about the respondent's £170,000 application for Costs because of a 'Witch Hunt' racial slur. Although initially vague, the claimant accepted he had spoken to the journalist before this article was published.

4. The Tribunal asked the claimant if he required any assistance/adjustments in the light of his health leading up to this Hearing. He explained he might need more frequent breaks to accommodate his IBS. This was agreed (and was in fact accommodated). In addition, the claimant was suffering with a migraine/headache and was given breaks to take some medication and get some fresh air on 3 occasions.

5. The Tribunal explained the three-stage test to a Costs application, namely whether the threshold for Costs was met under Rule 76 (1), if so, whether or not the Tribunal should exercise its discretion to make a Costs award and if it did, how much to award. The Tribunal explained that it may have regard to the claimant's means in considering whether to exercise its discretion to make an award and/or in relation to how much (Rule 84). The Tribunal also informed the claimant of some relevant case law in particular (***Yerrakalva v Barnsley Metroplolitan Borough Cpuncil & another ICR 2012 4***20.

6. The claimant gave evidence on his means under oath and was cross examined and questioned by the Tribunal on his means. Both parties delivered oral submissions and written submissions too.

7. Having undertaken some reading, the Tribunal also expressed its provisional views on the claimant's written response to the respondent's application for costs, that it contained substantial narrative about allegations/assertions which had already been decided by the Tribunal's

findings and conclusions in the Liability Judgment and/or comments which were inconsistent with those. The claimant was cautioned that the parties and Tribunal were bound by those findings and conclusions and the Costs Hearing would not be an opportunity to re-open those matters already decided.

8. The Tribunal announced a proposed procedure for the Costs Hearing as follows: the respondent would make its application for costs orally, supplementing its written application; thereafter, the claimant's statement on means would be taken under oath; the respondent would have an opportunity to cross examine that evidence; the Tribunal would put any questions it might have; the claimant would then be able to address the Tribunal with oral submissions to supplement his written response; the respondent could, if it wished, have a chance to put forward closing remarks in the light of the claimant's testimony. Both parties agreed this procedure for the Hearing.

9. On day 2 of the Costs Hearing, the claimant informed the Tribunal of various prescription and non-prescription medication he had been taking over various dates (see below). When asked what he was asking the Tribunal to do with this information and/or if he was making an application, he said it was not put forward as mitigation, for the Tribunal to have regard to if it gets to the stage of exercising/considering its discretion whether to make a Costs award. The claimant also referred to eye strain which he said he suffered with since before the Liability Hearing. This made reading documents difficult he said. When asked why he had not raised this before having regard to the substantial volume of documents at the Liability Hearing and the length of his own witness statement, he said he did not consider it to be relevant as he was concentrating on the issues in the case. For the purposes of the Costs Hearing, he said he could manage without assistance.

10. At the end of day 2 of the Costs Hearing, before reserving Judgment (subject to deliberation in Chambers), the Tribunal made the following Orders:

    - On or before 30 September 2022, the claimant is to provide to the respondent and to the Tribunal a copy of the current rental agreement of the property in Oxford (of which he is the landlord) and a copy of 12 months' rent (income) statements for the property.

- On or before 30 September 2022, the claimant is to submit to the respondent and the Tribunal, professional valuations of both of his properties in London and Oxford as disclosed at the Costs Hearing. For the avoidance of doubt, the claimant is to furnish forthwith the exact postal address of both properties to the respondent.

- On or begore 30 September 2022, the respondent is to submit to the claimant and the Tribunal, its own professional valuations of both of his properties in London and Oxford as disclosed at the Costs Hearing.

- On or before 30 September 2022, the claimant is to submit to the respondent and the Tribunal, evidence of the original and remaining term of the long Lease in respect of the London property.

- On or before 30 September 2022, the claimant is to submit to the respondent and the Tribunal, evidence of the value/funds of his Prudential (or other) Pension fund (as disclosed at the Costs Hearing)

- On or before 30 September 2022, the claimant is to submit to the respondent and the Tribunal, evidence of the balance of his savings with Nationwide (or otherwise) as disclosed at the Costs Hearing

- These Orders need to be complied with fully and strictly by the date specified as the Tribunal will be meeting in Chambers on 5 October 2022 to deliberate on the Costs application. Any evidence not before the Tribunal, as Ordered, may be factored in to the Tribunal's deliberations.

- The Tribunal also records leave given to the claimant to provide final additional submissions, if he so wishes, limited to 3 pages of A4, font not less than 12 on or before 30 September 2022.

11. The Tribunal had to caution three times, members of the claimant's family and friends who were observing the Hearing, who were shouting inappropriate comments from the back of the Hearing and addressing the Tribunal directly. On the last occasion, the observers were warned that if this happened on one further occasion, they would no longer be able to

remain in the Hearing room. On one of these occasions, the comments from the observers followed the respondent's Counsel's questioning of the claimant about whether he had or was likely to receive in the near future any inheritance. The claimant and members of his family became emotional and a break was taken. During the break, the Tribunal Hearing room was entered by the family and friends observers 5 times, without announcement or explanation. Upon the return of the parties to the Hearing, the Tribunal expressed its understanding of the claimant's bereavement, which had occurred during the course of the Liability Hearing, at which hearing the Tribunal had also expressed its condolences and paused the Tribunal Hearing for a day. However, the Tribunal added that in the context of a substantial Costs application, Counsel's line of questioning was not unreasonable or inappropriate. The observers were also reminded to cease entering the room unilaterally and if they wished to bring something to the Tribunal's attention during a break, to contact the clerk.

12. The Tribunal received emails with attachments from both parties by 30 September 2022, including the valuations from both parties of the claimant's properties, evidence of the leasehold title and leasehold term of the claimant's London property, evidence of the claimant's prudential pension fund value, evidence of the claimant's savings with Nationwide and evidence of the claimant's rental agreement and income in respect of his Oxford property.

Relevant Findings of Fact

13. The following findings of fact were reached by the Tribunal, on a balance of probabilities, having considered all of the evidence/documentation during the hearing, including the documents referred to by the parties, including the Judgment on liability and taking into account the Tribunal's assessment of the evidence.

14. Only findings of fact relevant to the issues in the Costs Hearing, and those necessary for the Tribunal to determine, have been referred to in this judgment. It has not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. The Tribunal has not referred to every document it read and/or was taken to in the findings below but that

does not mean it was not considered if it was referenced to in the witness statements/evidence or submissions and considered relevant.

15. The Liability Judgment was promulgated on 16 May 2022. The claimant's claims for Unfair Dismissal, Direct Race Discrimination, Harassment and Victimisation were all unanimously dismissed following 12 days of reading, evidence and submissions and 3 days of deliberation.

16. On 13 June 022, the respondent submitted a written application for costs under Rule 76 (1) (a).

17. The Tribunal listed a Costs Hearing and Ordered the claimant to provide a statement of means.

18. The claimant provided a written response dated 6 September 2022. He also submitted a statement of means accompanied with a statement of truth.

19. The claimant made an application for the Costs Hearing to be postponed which was refused.

20. The claimant had submitted a statement of means which stated he had net income of £2610.10 and outgoings of £1865.69, leaving a surplus of £744.47. His income is made up of two pensions and rental income. The claimant lives alone with no dependants.

21. During the course of his oral testimony, it emerged that one of his monthly outgoings entitled 'Litigation Settlement with LSBU' was in fact a monthly sum of £235 but which would cease in January 2023. This was in respect of a Costs award in the respondent's favour in respect of unrelated civil proceedings.

22. In respect of the claimant's flat in Brixton, the claimant said this was a terraced house over 2 floors with 2 double bedrooms and one small bedroom. He said it was Leasehold with about 80 years remaining (of an original 125 years' lease). He said it was mortgage free. He said he had no idea of its value before indicating a valuation range of between £200,00 and £300,000. When the claimant provided a copy of the land registry deeds, it showed the lease was for 125 years from 11 June 1990. Thus, the Tribunal found the remaining term was about 93 years. The Claimant's valuation (from Purple Bricks), pursuant to the Tribunal's Orders, gave a

range between £525,00 and £550,000. The respondent's valuation, pursuant to the Tribunal's Orders, said to be received from Haart Brixton Estate Agents, was between £600,000 and £650,000.

23. In respect of the claimant's house in Oxford, he said this was a semi-detached house with two double bedrooms and one small bedroom. This was also mortgage free and had been rented out for 30 years. He indicated a valuation range of between £300,000 and £400,000. The claimant's valuation (from Chancellors, Oxford), pursuant to the Tribunal's Orders, gave a valuation of £375,000. The respondent's valuation, pursuant to the Tribunal's Orders, said to be received from Connells Estate Agents, gave a range between £500,000 and £550,000.

24. In respect of the rental income on this property, the claimant had stated this to be £672.40 on his statement of means. When asked what the gross rent was, he said he did not know but estimated it to be £1,000. When the claimant provided a copy of the tenancy agreement and rental statements pursuant to the Tribunal's Orders, these showed a gross rent of £1,025 per month and a net rent (net of agency fees) of £840.

25. The claimant was also asked about savings. He said he had about £30,000 savings with Nationwide. He also said he had an ISA account with approximately £6,000. This savings information was not on his statement of means. The documentation disclosed pursuant to the Tribunal's Orders showed a slightly increased value £33,223.

26. In response to Tribunal questioning, the claimant also disclosed he had another Pension plan/fund with Prudential which he valued at about £120,000 which funds he had access to, though there may be a tax consequence. This information was not on his statement of means. The documentation disclosed pursuant to the Tribunal's Orders showed a slightly reduced value of £113,962.

27. The claimant's additional disclosure, pursuant to the Tribunal's Orders, also revealed a payment out from his current account to a Co-op bank on 8 September 2022 in the sum of £4305.15. It was not known whether or not this was to another account belonging to the claimant. There were also substantial debits of £5,005, £2,200 and £5,500 from his Nationwide savings account but there was no information about where these sums were transferred to. There also appeared to be a separate and new retirement plan

with St James Place into which the claimant had paid the sum of £2,880. On page 26 of the additional information for this retirement account, there was a schedule of possible monthly contributions. There was however, no further information about the possible/expected return from this retirement plan.

28. Before the Final Hearing, which was listed over 15 days in February 2022, on 8 October 2021the respondent had made a 'without prejudice save as to costs offer' of £50,000 to the claimant. This was before witness statements had been exchanged and before any fees of Counsel had been incurred. The offer was not accepted. The offer was restated on 17 January 2022. The offer was not accepted.

The respondent's costs application

29. The respondent's application for costs was twofold – under Rule 76 (1) (a) and (b), namely:

    When a costs order or a preparation time order may or shall be made

    76 (1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—

    (a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or

    (b) any claim or response had no reasonable prospect of success.

30. The respondent said that Eversheds Sutherland were instructed in the claim from October 2021. Previously the respondent was represented by Veale Wasbrough Vizards LLP. The recovery of the respondent's costs before October 2021 were not being sought.

No reasonable prospects of success

31. In respect of the claims having no reasonable prospects of success, in its written application for costs dated 13 June 2022, the respondent asserted

and relied upon the following findings and/or conclusions of the Tribunal's reserved Judgment:

32. Paragraph 175:

The Tribunal found that on any reasonable reading/interpretation of the respondent's policies, with well-known principles of bullying and harassment in the workplace, the claimant's evidence in this regard had been remarkable and insincere.

This was in respect of the claimant's insistence that the respondent could not pursue him for alleged harassment unless a protected characteristic was involved.

33. Paragraph 176-178 & paragraph 302:

176. The claimant also placed reliance on a contract he said existed between the respondent and its students, specifically in support of his belief that providing dissertation supervision to part time students on Thursdays could only be done face to face. There was no contract in either bundle. During the course of the Hearing, the respondent disclosed an 'Enrolment Terms' document and subsequently a document called 'MA Planning Policy and Practice' document (written by the claimant). There was no reference to the requirement for face-to-face dissertation supervision in these documents. It was not until day 10 of the Hearing, when the claimant was being cross examined, that the claimant claimed that there was another separate document, not before the Tribunal, which obligated the respondent to provide face to face supervision. He said, the respondent was 'bound' to do so. In response, the Tribunal remarked:

"How can we determine whether or not you have made a protected disclosure without the document you place reliance on? If you knew it to be relevant you would have raised it before, it is now day 10 of this Hearing?"

177. The claimant appeared to be referring to some other module guide; the respondent said nothing else existed, the Tribunal could not be sure if the claimant was referring to some other document which he had written. He added that he didn't get disclosure and that there must be some legal redress if students didn't get face to face dissertation supervision.

178. The Tribunal found that the claimant's reliance on the documents in support of his belief had constantly wavered and found there was no other relevant document.

302.Nothing in the Enrolment Terms or the MA Planning Policy and Practice Course Guide, which the claimant wrote, required the provision of face-to-face dissertation supervision for part time MA Planning students on the one day they attend (Thursdays in this case). The claimant was adamant in oral testimony that this was the requirement he had in mind at the time and now. He said the university was bound to provide face to face supervision and on day 10 of the hearing, he said this obligation was in a document not before the Tribunal. The Tribunal challenged the claimant and questioned how it, the Tribunal, could thus determine whether or not the claimant had made a protected disclosure if it didn't have before it the document the claimant placed reliance upon. In a further passage of evidence, the claimant said about face-to-face tuition that a 'student must have recourse…there must be some legal redress'. This sounded hopeful and aspirational but did not provide any support for a genuinely held belief that the respondent was in breach of contract, and/or which was objectively reasonable. The document/contract the claimant placed reliance upon was not before the Tribunal. In the Tribunal's conclusion, there was no one better placed to produce this than the claimant who was the Course Director.

This was in respect of the claimant's failure to produce the evidence that he was relying upon to justify his whistleblowing claim.

34. Paragraph 179

Ms Griffiths-Jones said after the clamant had taken out a grievance against her, she began to use avoiding behaviour. Further, that she felt intimidated because of the tone of his emails and because he had taken out a grievance against her. The Tribunal found it was plain and obvious, on any reasonable reading, that the grievance did, causatively, contribute to how she felt and the measures she was taking. The claimant's view to the contrary was, frankly, absurd.

This was in respect of the claimant's assertion that Ms Griffiths-Jones did not feel intimidated by the claimant's grievance against her. The

respondent said Ms Griffiths-Jones was the subject of the claimant's alleged protected act for his victimisation claim.

35. Paragraphs 202, 205 and 209

202 …Discrimination allegations are serious and in the Tribunal's conclusion, cannot be left to arbitrary speculation…

205. Discrimination allegations are serious and in the Tribunal's conclusion, cannot be left to arbitrary speculation

209. In such circumstances the Tribunal considered the claimant's allegation of discrimination against Ms Griffiths-Jones and Dr Tyler and his subsequent grievance about Dr Tyler's notes to be cynical and not made in good faith. The Tribunal concluded the claimant knew full well there was no basis for his belief that Ms Griffiths-Jones or Dr Tyler had discriminated against him or that the race card comment was an act of discrimination/victimisation. Rather than being opportunistic, the Tribunal concluded that the claimant's allegations were false and made in bad faith because the claimant did not believe in them. The grievance about the race card comment was thus disqualified from being a Protected Act by S.27 (3) EqA. The Tribunal was slow to reach this conclusion, but following careful deliberation, the Tribunal were unanimous and certain about this conclusion.

36. This was in respect of the claimant's victimisation claim whereby the Tribunal had not upheld any of the claimant's protected acts. The respondent asserted that the claimant's victimisation, discrimination and harassment claims were based on allegations which were 'false and made in bad faith because the claimant did not believe in them'.

37. Paragraph 248

245…The Tribunal concluded having regard to all the circumstances, it was not reasonable for the comments to have the effect of harassing the claimant and that the claimant's perception was unreasonable. The claimant knew full well that his discriminatory criticism of Ms Griffiths-Jones and Dr Tyler and his subsequent reaction to Dr Tyler's comments about this was disingenuous…

248.In the circumstances of this case and the contextual analysis of the Tribunal, the Tribunal concluded that the claimant's complaint was a cynical attempt to bolster an unjustified complaint which in truth had no racial element.

38. This was in respect of the race discrimination/harassment claim with the respondent's emphasis added as underlined.

39. Discrimination/Victimisation claims bound to fail

The respondent relied on the Tribunal's conclusion (paragraph 248) that the claimant had made a cynical attempt to bolster unjustified complaints which had no racial element to assert that in respect of all of the claimant's complaints of discrimination, the claimant knowingly based his claim upon allegations which were made in bad faith and which were objectively bound to fail.

40. Paragraph 288, 294 and 301

288…The Tribunal was satisfied and concluded that the respondent genuinely believed that the claimant had behaved in a bullying and/or harassing manner towards Dr Tyler and Ms Griffiths-Jones and he had undermined the authority of Dr Tyler and acted insubordinately towards him…

294 … the claimant's position was entrenched in vindicating his actions. The apologies the claimant said he was making went entirely against the grain of raising multiple grievances and appeals against those outcomes.

299... The respondent's decision to dismiss was not one which the Tribunal could interfere with. It was, by some considerable distance, within the range of reasonable responses. The claimant was the author of his own misfortune.

301 … This left a hopeless and unenviable impression upon the Tribunal that the claimant expected individuals to either be robust and resilient on some universal one-dimensional standard, or, that it was not possible for bullying and harassment to ever be actionable unless someone speaks out. The Tribunal drew upon its own collective industrial and judicial

experience in concluding that this was far removed from reality and the assertion was flatly rejected.

This was in respect of the respondent's assertions that the claimant's unfair dismissal claim was bound to fail and further that it was manifestly clear on an objective reading of the evidence that the respondent had a genuine belief that the claimant had behaved in a bullying/harassing manner and had undermined the authority of his line manager thereby justifying his dismissal.

41. On 8 October 2021, the respondent offered the claimant 50,000 in full and final settlement of his claims. The offer was without prejudice save as to costs. The respondent said, having reviewed the disclosure and considered the strength of its witness evidence, the prospects of the claimant's claims succeeding were low. The letter also asserted that the respondent believed there were significant issues with the claimant's claims. The context of the reason to make the offer was in respect of the alternative preparation costs for the 15-day Hearing. The offer was not accepted and no counteroffer was made. The offer was repeated on 17 January 2022. The offer was not accepted.

Vexatious, disruptive and/or unreasonable conduct

42. Paragraph 171

171.During the claimant' cross examination, the claimant objected to a reference/attack by the respondent's counsel on his upbringing by his mother. This was in the context of counsel putting to the claimant that, as a grown man, he did not have to be told by others that his actions or behaviour were bullying, because this was something that he would have learnt as a child in school. There was no express or implied reference to the claimant's mother. The Tribunal interjected when the claimant took issue with the point to explain the foregoing to the claimant. The Tribunal found that this (his upbringing by his mother) was something the claimant knew, or ought to have known, was not being put to him.

43. This was in support of the respondent's assertions about the Tribunal's remarks about the claimant's credibility/reliability and his conduct of the proceedings over the course of the final Hearing.

44. Paragraph 174

174. In so far this was related to oral evidence given by Dr Tyler, the Tribunal did not, unanimously, have any note of such evidence given by Dr Tyler and/or its connotations with witch- doctory. This was a description and annotation of the claimant's own making.

45. This finding was in relation to the claimant's tweet " I will give evidence at the Croydon Employment Tribunal on Monday that my line Manager at London South Bank University accused me of being a witch-hunter – I am not neither am I a witch-doctor" and was relied upon by the respondent as evidence of the claimant sensationalising and creating a misleading impression of the allegations and evidence in the claim to create or encourage media interest in his claim which the respondent asserted was unreasonable and vexatious.

46. Paragraph 180

180…The Tribunal found this wholly inappropriate and in addition, the claimant's denial of doing so, dishonest. Any comment which might have been forthcoming risked being put into the twitter public domain as the claimant was tweeting about his case.

47. This was in support of the respondent's assertions about the Tribunal's remarks about the claimant's credibility/reliability and his conduct of the proceedings over the course of the final Hearing.

48. Claimant's requests for documentation, information, non-agreement of the Bundle, approaches to respondent's ex and present employees

49. The respondent asserted that the claimant's application for an Unless Order had been refused by the Tribunal on 8 November 2021, had demanded additional information from the respondent, refused to agree the contents of the Bundle, had attempted to call additional witnesses of the respondent with improper pressure by stating 'if you do not appear voluntarily as a witness called by me, the Tribunal is likely to compel you to appear…in order to help you do the right thing and choose to be called voluntarily'

50. The respondent also relied on the claimant's application to amend his claim on day 10 of the Hearing. This was based on the evidence of the respondent's witnesses which had been exchanged on 23 December 2021. The application was refused but the respondent asserts it was put to expense to defend the application which it considered to be unreasonable and bound to fail.

51. The respondent also relied on the claimant's bringing of a second claim after the conclusion of these proceedings, which the respondent said relates to and arises out of the same factual matrix as the proceedings determined which the respondent said amounts to vexatious conduct.

52. In oral submissions, to supplement the respondent's written application, Ms Ahmad said:

- The claimant's conduct in bringing and conducting the proceedings had passed the threshold for making a Costs order under Rule 76 (1) (a) by some margin which she said also fed into the Tribunal's discretion under the second stage. She described the claimant's conduct as egregious.

- Pursuant to ***Yerrakalva***, Ms Ahmad invited the Tribunal to look at the whole picture to assess unreasonable conduct and that it was not necessary to identify which conduct led to the costs incurred.

- Ms Ahmad said there was an overlap between the claimant's conduct in bringing the proceedings and the claim having no reasonable prospects of success.

- Ms Ahmad described the claimant as bringing confusion, obfuscation and muddying the waters.

- Ms Ahmad reminded the Tribunal that the Bundle was around 3000 pages and the first witness statement was 221 pages; the respondent had to prepare on that basis.

- Ms Ahmad reminded the Tribunal of paragraphs 61 and 64 and 68 of its Judgment which recited extracts from the claimant's emails which she said would be obvious to anybody as being disrespectful and insubordinate and Dr Samuel Johnson-Schlee's view of one of

the claimant's emails as particularly 'galling and undermining' and his view that the claimant's recent emails as 'verging on bullying'.

- Ms Ahmad referred to paragraph 74 of the Judgment which recited Ms Griffith-Jones' email of 20 December 2018, which she said was on any plain reading, not right and evidence of bad behaviour. She said the claimant did not desist as instructed, instead he made her more uncomfortable, leading to Dr Tyler viewing the claimant's conduct as creating a toxic environment and having an inability to accept instructions (Paragraphs 75, 77 and 79 of the Judgment).

- Ms Ahmad considered the claimant's dealings with Mr Budd, as set out in paragraph 85 of the Judgment in detail, as particularly relevant in her submissions. She said he was the 'check' on the claimant as he was a TU member and a friend of the claimant. It was Mr Budd who beseeched the claimant to withdraw his grievance (s) and apologise as he foresaw what would happen. Ms Ahmad said he was ignored and in fact a grievance was raised against him which she described as a counter-offensive/aggression. This she said went to the unreasonableness of bringing the claim. Ms Ahmad described the claimant's treatment of Mr Budd as the claimant's mode of operation and described the claimant's conduct as pig-headed and the making a mountain out of a molehill all of which increased/added to the overall costs of the proceedings. Ms Ahmad also cited and referred to Dr Budd alerting the claimant to the potential 'devastating consequences' of his approach.

- In relation to the discrimination claims in particular, Ms Ahmad referred to the claimant 'skirting around the issue' (paragraph 87 of the Judgment relating to the claimant's meeting with Dr Barker); she said he had acted in a similarly unreasonable way when making a reference to Ms Griffith-Jones' treatment of him (paragraphs 201 and 202 of the Judgment) – she said he knew full well how serious the implications (of discrimination allegations) were which she said were vexatious, malicious or unreasonable. Ms Ahmad added that it was clear from the Judgment, paragraph 204, that the claimant's allegation of discrimination against Dr Tyler was convoluted to cynically bolster his claim. She said muddying the waters with 'Race' fell squarely with unreasonable conduct in the bringing of the claim. Ms Ahmad relied on the Tribunal's conclusions in paragraph

207 as evidence of unreasonable conduct in the bringing of the discrimination claim. Ms Ahmad said the factual matrix analysed by the Tribunal meant the clamant knew full well, by a long stretch, that Ms Griffith-Jones' request of the claimant to be removed from the emails had nothing to do with race. The claimant did not take out a grievance (against Ms Leeyou, who is black) who had asked to similarly be removed. Ms Ahmad said the claim was thus malicious and vexatious. Ms Ahmad relied on paragraph 208 of the Tribunal's conclusions in submitting that the claimant had made the allegation to detract from his own behaviour and then issued proceedings on this 'bogus narrative'. She said this was cynical, vexatious and certainly unreasonable. She said that paragraph 209 of the Tribunal's Judgment confirmed that the claimant had acted cynically, not in good faith. She said the Tribunal's Judgment was unanimous in concluding the claimant's allegations were false and made in bad faith. She concluded, in relation to this part of her submissions, by saying the 'Race Card' issue became a big part of the claimant's claim, otherwise the case could have been a straightforward unfair dismissal claim. She said this was cynical, vexatious and unreasonable conduct to cloud and detract from his own behaviour. She said this was appalling.

- In relation to the Unfair Dismissal claim specifically, Ms Ahmad relied on paragraph 222 of the Tribunal's Judgment wherein the Tribunal concluded that the evidence of the case against the claimant had been overwhelming. The evidence was documented: this was not a 'he said/she said' case. She relied on the Tribunal's conclusions about the manner, tone and density of the claimant's actions. It had taken 2 weeks of a Hearing to arrive at that point whereas multiple academics had made that point before. Ms Ahmad also relied on the Tribunal's conclusion in paragraph 299 that the respondent's decision to dismiss was by 'some considerable distance', within the range of reasonable responses, thus asserting, the claim had no reasonable prospects of success and/or the decision to bring the claim was unreasonable. Ms Ahmad further relied on paragraph 301 in relation to the claimant's criticism of Ms Griffiths-Jones being weak and that absent a complaint of bullying, it could not be actionable – which the Tribunal concluded was a hopeless position. Ms Ahmad said the claimant was thus unashamedly bullying on paper and had no respect or empathy and referred to the Tribunal's

conclusion in paragraph 299 that the claimant was the author of his own misfortune. Thus, she said, the threshold for making a Costs Order on the Unfair Dismissal claim was met.

- Ms Ahmad referred to the opportunity the claimant had to walk away with £50,000 pursuant to the without prejudice save as to costs offer. She informed the Tribunal that the respondent was not seeking to recover its costs incurred with the previous Solicitors which she said amounted to £67,000. She said this was evidence of restraint in its application. She said the respondent had charitable status and an entire faculty had been involved in this case. The offer, she said, had been made because the respondent was desperate to draw a line under the matter even though the claims were outrageously bad. The claimant's schedule of loss was around £600,000. The offer she said was a warning and given what the claimant knew, his conduct in continuing with the claim was unreasonable (conduct) taking the application beyond the threshold for making a Costs Order (which the Tribunal understood related to the manner in which the proceedings were being conducted). Ms Ahmad said the offer had been made before witness statements had been exchanged, before Counsel was instructed and before Counsel's brief fee was incurred. She argued that there was a reasonable cut off point, namely all of Eversheds' Costs were incurred after 8 October 2021.

- Ms Ahmad said the offer was extended to 26 October 2021 and restated on 17 January 2022. The claimant's refusal was unreasonable conduct (which the Tribunal understood related to the manner in which the proceedings were being conducted).

- Ms Ahmad also criticised the claimant's non-agreement of the Bundle, referring to the claimant's emails at pages 226-228 of the Costs Bundle and said that 13 emails had been received by the claimant yet only 1 additional document was provided. She said the claimant was obfuscating and being awkward.

- Ms Ahmad referred to the respondent's additional costs of defending an application to amend on day 10 of the Hearing as a further example of the claimant's unreasonable conduct in the manner in which the proceedings were conducted.

- Ms Ahmad referred to the claimant's Tweet (about the claimant denying he was a witch hunter and neither was he a witch-doctor) during the course of the Hearing and the purported reference to the claimant's mother and the comments about both these issues in the Judgment (paragraphs 171 to 174) as further evidence that the manner in which the proceedings were conducted was unreasonable. She added it had never been put to Dr Tyler that the 'witch hunter' phrase had a racial connotation. She said in his witness statement, when the claimant had whittled down his examples of well-known racial stereotypes, 'witch-hunting' was not one of them. Ms Ahmad's submission was that this was evidence of the claimant attempting to sensationalise /exaggerate his claim. Ms Ahmad also referred to the more recent article (leading up to the Costs Hearing) with a heading 'academic who said 'witch-hunt' was a racist phrase faces £170,000 Court bill' which she said was further evidence of unreasonable conduct as it was the claimant's attempt to embarrass and intimidate the respondent and the Tribunal.

- Ms Ahmad said the claimant's denial of the concept of non-protected characteristic harassment in evidence/at the Hearing, as found in paragraph 175 of the Judgment (which evidence was found to be 'remarkable and insincere'), was evidence of unreasonable conduct in relation to the manner in which the proceedings had been conducted. She said it also fed into the claims having no reasonable prospects of success.

- In respect of the protected disclosure claims, Ms Ahmad said it wasn't until the claimant was pinned down, that he placed reliance on the obligation for face-to-face teaching. She reminded the Tribunal of paragraph 178 of the judgment and the Tribunal's finding that the claimant's evidence about this had constantly wavered.

- Ms Ahmad referred the Tribunal to paragraph 180 which had found the claimant's submissions to the Tribunal about his conversation with the legal officer to be dishonest and expressed surprise at the claimant's boldness to maintain his stance.

- Ms Ahmad referred to paragraph 229 of the judgment and the claimant's contrary argument to the conclusion about the

appropriateness of overlapping discipline and grievance processes, as one which was bound to fail.

- Ms Ahmad referred the Tribunal to paragraphs 245 and 248 of the Tribunal's judgment wherein the Tribunal had concluded that the claimant knew full well that his discriminatory criticism of Ms Griffiths-Jones and Dr Tyler and his subsequent reaction to Dr Tyler's comments about this was disingenuous and a cynical attempt to bolster an unjustified complaint which in truth had no racial element. By definition, she said, the claimant's conduct was vexatious, malicious and unreasonable which had no reasonable prospects of success.

- Ms Ahmad referred the Tribunal to paragraph 296 and the Tribunal's conclusions that the claimant's comparators were materially different which she asserted he knew. Every angle of his case she said was unreasonable.

- Ms Ahmad said that the Tribunal's language in the Judgment – disingenuous, false, bad faith, cynical and insincere all went to the claimant's unreasonable conduct and also went to the claims having no reasonable prospects of success.

- Mr Ahmad invited the Tribunal to exercise its discretion to award the respondent's costs. She said not all costs were being sought, having regard to what was at stake it was reasonable for the respondent not to instruct junior counsel, the respondent had charitable status and a lot of good could be done with the money, she reminded the Tribunal the respondent had offered £50,000 to bring the matter to an end. She added that ***Yerrakalva*** required the Tribunal to look at the bigger picture without needing to make a causal link between conduct and costs, she asserted the claim for costs (which only post dated the without prejudice save as to costs letter dated 8 October 2021) was reasonable

- Ma Ahmad said the claimant had nothing to support his allegations and the burden of proof did not shift on any of his claims with the exception of the 'race card comment' but which was not a protected act.

- Of the unfair dismissal claim, Ms Ahmad said it was within the range of reasonable responses, by some margin, which she said the claimant knew. She reminded the Tribunal its discretion was broad.

- Ms Ahmad said though the claimant was a litigant in person, he still had to articulate what was said or done; instead, she said, the claimant had been deliberately vague.

- In relation to the claimant's use of social media, Ms Ahmad said that continued until now – she said the claimant was continually sensationalising the claim cynically and to embarrass the university all of which adds to costs.

The Claimant's response to the Respondent's Costs application

53. The claimant referred the Tribunal to the case of ***Opalkova v Acquire Care*** in relation to time when the prospects of success should be assessed. The claimant remarked that the respondent had only asserted that his prospects of success at the final Hearing were 'low' and did not provide evidence of strengths and weaknesses. The Tribunal found that the claimant's comments in paragraphs 5 and 6 about inconsistencies in the respondent's witness evidence, were arguments which were an attempt to re-open the evidence in the case about which findings and conclusions had already been made.

54. In relation to no reasonable prospects of success, the claimant asserted that the respondent's costs application was a retrospective view and that that the claimant was bound to conclude that the respondent's 'Costs Warning' was not well founded and speculative.

55. The Tribunal found that the claimant's comments in paragraphs 8 and 9 about the claimant's reliance on a 'student contract', were an attempt to re-open the evidence in the case about which findings and conclusions had already been made. In addition, the claimant was attempting to introduce new evidence.

56. The claimant asserted that as it was initially thought that his conduct could lead to a final warning or dismissal, thus, the ultimate decision to dismiss

was marginal, and thus any bullying and harassment was only marginal, thus he said it was reasonable for the claimant to think his dismissal was a close call/borderline.

57. The Tribunal found that the claimant's comments in paragraphs 11 and 12 (about Dr Tyler's evidence) were an attempt to re-open the evidence in the case about which findings and conclusions had already been made. In addition, no such findings/conclusions about Dr Tyler's evidence had been reached.

58. The Tribunal found that the claimant's comments in paragraphs 13 to 17 (about whether Ms Griffiths-Jones alleged she felt bullied or harassed and/or that the grievance against her was vexatious) were arguments which were an attempt to re-open the evidence in the case about which findings and conclusions had already been made.

59. The Tribunal found that the claimant's comments in paragraphs 18 to 20 (about the alleged protected acts) were an attempt to re-open the evidence in the case about which findings and conclusions had already been made. The Tribunal did note however that the claimant also asserted that the respondent did not provide the basis for its assertion in its grounds of resistance that the claimant's allegations of protected acts were made in bad faith (paragraph 144, page 193 of the Liability Bundle).

60. The claimant asserted that as it was accepted that Dr Tyler had used the phrase that playing the 'race card was cheap and nasty' which he had said he did not mean any offence by, it was reasonable that the claimant did not believe his claims had no reasonable prospects of success.

61. The claimant asserted that the respondent's reference to the claimant making a cynical attempt to bolster unjustified complaints which had no racial element was a reference to a Tribunal conclusion not a finding.

62. The claimant asserted that the respondent's reference to the claimant's position (in relation to unfair dismissal) being entrenched in vindicating his actions and that his apologies he said he was making went entirely against the grain of multiple grievances and appeals against those outcomes and the dismissal being, by some considerable distance, within the range of reasonable responses, were references to conclusions not findings, before asserting the respondent's opening and closing narrative lacked credibility.

63. The claimant also asserted that the respondent's without prejudice, save as to costs letter, was based on disclosure and the respondent's witness evidence and did not cite expressly bad faith allegations from the claimant or the conclusions ultimately reached by the Tribunal by applying relevant case law. The claimant said he had raised questions he needed answers too and then referred to various other cases where substantial compensation for discrimination had been awarded.

64. The clamant asserted the respondent had not said he had no reasonable prospects of success, rather they were low. He said the respondent had not applied the three questions in ***Opalkova*** which required determination of when the claimant's claims had no reasonable prospects of success and subject to that did the claimant know that or ought he to have known that.

65. The claimant asserted he had asked reasonable questions about the offer and was aware of other discrimination claims receiving much higher compensation.

66. The Tribunal found that the claimant's comments in paragraphs 37 to 43 (about the claimant being cross examined that people learned not to bullies at school) were an attempt to re-open the evidence in the case about which findings and conclusions had already been made. In addition, the claimant was attempting to introduce new evidence.

67. The claimant asserted he had reasonably sought information about his salary and pension in relation to the settlement offer. Further that it would not have been in his interests to accept the offer because of the evidence available, the strength of his claim and the serious defects and weaknesses in the respondent's defence.

68. The claimant asserted he had not refused to agree the Bundle and said the Bundle was not agreed because of default by the respondent.

69. The claimant asserted that the respondent's reliance on the ET case of ***English v Amshold Group Ltd 3200079-12*** (in relation to sensationalising his claim) was not binding on the Tribunal and in any case not relevant authority as the claimant said there was nothing in the Judgment to say the claimant was seeking to create a misleading impression to encourage media interest.

70. The claimant asserted his email of 12 November 2021 raised different issues about disclosure (not in relation to the Tribunal's refusal of an Unless Order).

71. The Tribunal found that the claimant's comments in paragraphs 50 to 51 (about the tweets about being a witch hunter and not being a witch doctor) were an attempt to re-open the evidence in the case about which findings and conclusions had already been made. In addition, the Tribunal found that the allegation of witch hunting or being a witch hunter was not a stand-alone allegation of race discrimination against Dr Tyler which was the context the claimant was now, after the event, introducing. The specific comment from Dr Tyler's notes which was challenged as being discriminatory was the 'race card' comment. The Tribunal was bound by paragraph 244 of its liability Judgment.

72. The Tribunal found that the claimant's comments in paragraphs 52 to 53 (about the claimant's comments to the Legal Officer) were an attempt to re-open the evidence in the case about which findings and conclusions had already been made. In addition, the Tribunal noted that the EAT has endorsed the Tribunal's conclusion in relation to this at the EAT sift of the claimant's appeal.

73. The claimant asserted he was entitled to express a view on the likelihood of the Tribunal Ordering the attendance of an unwilling witness. Further that the respondent raising this was unreasonable and disruptive.

74. The Tribunal found that the claimant's comments in paragraph 56 (about his application to amend his claim on day 10) was an attempt to re-open the evidence in the case about which findings and conclusions had already been made. The Tribunal did note however, that in addition, the claimant did say that as a litigant in person, the same level of expertise was not required of him. The claimant added that the respondent's application to include additional tweets was equally unreasonable. He also complained that some of the tweets were undated and that tweets since the Hearing had concluded were not relevant to the way in which the proceedings had been conducted. The claimant also asserted he had a legal right to tweet about his case. He added that the journalist had taken the photos seen in the tweets outside the Tribunal and said the journalist had highlighted the

witch hunting accusation which the claimant said he regarded as a racist term.

75. The claimant asserted that he did not unreasonably refuse to agree the cast list in this case.

76. In oral submissions the claimant asserted as follows:

- He had a right to speak to the press.

- He referred the Tribunal to ***Opalkova*** test. He said there was a prospect of success and it was not a retrospective test.

- He referred to breaches by the respondent of Case Management Orders and the Bundle not being agreed. He referred to more than one copy of the same document being in the Bundle. He referred to two pages being illegible. One document should have been vertical, one document had handwritten notes on it, one copy was dirty, another document had some text missing and there were some handwritten documents including of the disciplinary hearing.

- The claimant asserted that the respondent had not pleaded that the claims had no reasonable prospects of success. He said the claim had been drafted with a partner in a law firm in Manchester.

- He referred to the ***English v Amshold*** case. He asserted his 200 page witness statement was not read (which the Tribunal understood to mean by the Tribunal) and that the respondent had been understating its claim for costs by not including to VAT.

- The claimant referred to his County Court claim and his settlement with the respondent of £230 per month in relation to costs which he said was evidence of his reasonableness.

- The claimant asserted that Dr Winter did think his claims had reasonable prospects of success, so did Ms Paice and his sister. He said it was incorrect to state the whole faculty was involved as that would constitute 200 lecturers.

- The claimant referred to the unnecessary tweets brought to the Tribunal's attention. He said aggressive, slippery, bullying and unmanageable and witch hunting were not words which would be used to describe a white British male (paragraph 123 of his witness statement, though witch-hunting was not referred to in paragraph 124 wherein he referred to phrases which were well-known racial stereotypes).

- The claimant relied on a letter from his psychotherapist (Mrs Taylor) which had referred to 'racial PTSD' which had influenced his behaviour as well as the letter from Dr Rabie.

- The claimant asserted if the respondent thought his claims had no reasonable prospects of success, it should and could have said so. Further that it had not specified why the claims had no reasonable prospects of success in its 8 October 2021 letter.

- Finally, the claimant asserted the respondent had increased its offers from £5,000 to £10,000 to £20,000 and then £50,000 thus, he asserted this was evidence that the respondent's believed their case (defence) was weak.

Respondent's response to the claimant's submissions

77. Ms Ahmad said the claimant in 2 hours of submissions had spent 30 minutes commenting on the Bundle, he hadn't referred to the Judgment once before discussing the tweets which she said were a sideshow.

78. Ms Ahmad said she understood the claimant to be relying on being depressed or having PTSD and said Mrs Taylor's report about relevance or effect of this on dishonesty, his false grievances or his claims should be given little or no weight.

79. Ms Ahmad concluded by challenging the claimant's evidence on the Oxford house valuation, the claimant did not reveal his £120,000 Prudential Pension fund, in respect of which 75% would be tax free and could be instantly accessed. He also had not revealed his £30,000 savings (on his statement of means).

Claimant's additional written submissions pursuant to the Tribunal's Orders

80. The claimant referred again to ***Opalkova*** and said the question for the Tribunal was whether it was reasonable for the claimant not to believe that his claims had no reasonable prospects of success. Thus, he said the key question was not the Tribunal conclusions in its Judgment. He asserted that the Tribunal had not said the claim should never have been brought.

81. The claimant commented on whether and to what extent he was dismissed by Mr Stevenson or with the input of Ms Coupar. The Tribunal found that the claimant's comments in paragraphs 3 to 4 of this statement about this, were an attempt to re-open the evidence in the case about which findings and conclusions had already been made. The Tribunal found the same point applied to whether or not the claimant had shown remorse (paragraphs 5 and 6). To the extent that the claimant was asserting he reasonably believed when he brought the claims, that his claims did not have no reasonable prospects of success and/or that he did not know that any remorse was not considered genuine, this will be analysed below in the Tribunal's conclusions.

82. The Tribunal found that the claimant's comments in paragraph 7 (about Mr Stevenson's discussions with Professor Barker and Professor Bailey after the disciplinary hearing) were an attempt to re-open the evidence in the case about which findings and conclusions had already been made.

83. The Tribunal found that the claimant's comments in paragraph 8 to 11 (about race discrimination and specifically Dr Tyler's 'race card' comment) were an attempt to re-open the evidence in the case about which findings and conclusions had already been made. To the extent that the claimant was asserting he reasonably believed when he brought and continued with the claims, that his claims did not have no reasonable prospects of success, this will be analysed below in the Tribunal's conclusions.

84. The claimant asserted that the respondent's initial claim for costs in the County Court claim was 10 times the costs they settled for which he considered to be the epitome of disproportionality.

85. The claimant submitted that the respondent had incurred unnecessary costs such as submitting amended pleadings, an application to introduce various

tweets of the claimant, accused the claimant of coercing Ms Coupar, accusing the claimant of being untruthful about informing his witnesses of the change of day for their evidence, applied for case management deadline variations because of its own unpreparedness, it did not pursue an earlier application for costs, it submitted an unagreed Bundle of 2858 pages of poor quality a large proportion of which was not referred to by either party, it had exaggerated its closing submissions and had pretended to carry out a disciplinary investigation in May 2021.

86. Finally, the claimant said if his conduct was so egregious, he could and should have been warned about such conduct. Alternatively, the claimant relied, in mitigation, on the reports of Mrs Taylor (psychotherapist) and Dr Rabie. He asked the Tribunal to make no award or an award not exceeding 10% of the Costs claimed.

Applicable Law

87. Rule 76 (1) says:

A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that:

(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted

(b) or any claim or response had no reasonable prospect of success.

88. In assessing whether a party has acted unreasonably, the Court of Appeal in ***Yerrakalva v Barnsley Metropolitan Borough Council and another 2012 ICR 420*** held the vital point in exercising the discretion is to look at the whole picture. The Tribunal has to ask whether there has been unreasonable conduct by the paying party in bringing, defending or conducting the case and in doing so, identify the conduct, what was unreasonable about it and what effect it had.

89. The Tribunal should have regard to the nature, gravity and effect of the instance or instances of unreasonable conduct ***Mcpherson v BNP Paribas 2004 ICR 1398 EAT.***

90. Giving false evidence is an example of behaviour that might constitute unreasonable conduct having regard to the nature , gravity and effect of such conduct. ***Arrowsmith v Nottingham Trent University 2012 ICR 159.***

91. Where a Tribunal finds unreasonable conduct and exercises its discretion to make a costs order, there is no requirement to establish a causal link between the unreasonable conduct and costs attributable to that unreasonable conduct (***Yerrakalva***).

92. In relation to no reasonable prospects of success, the EAT has recently confirmed in ***Opalkova v Acquire Care Ltd EAT 0056/21*** that 'claim' refers to a complaint or cause of action. Also, that the correct point in time in respect of which to make that assessment will either be at the point when the claim or response was submitted, or at some later point when circumstances changed such as to alter the prospects and materially change the assessment.

Conclusions and analysis

Did the Unfair Dismissal claim have no reasonable prospects of success?

93. The Tribunal first considered whether in relation to the claim for Unfair Dismissal, the threshold for the making of a Costs Order was met and if so, from when.

94. Ms Ahmad had asserted this was not a 'he said, she said' case, as the case against the claimant was all documented. The Tribunal agreed with this submission. The case against the claimant, contemporaneously, was based on the nature, tone and volume of email traffic by which the respondent believed the claimant to have acted in a bullying and/or harassing way towards Dr Tyler and Ms Griffiths-Jones and insubordinately and in an undermining manner towards Dr Tyler. In addition, his grievance against Ms Griffiths-Jones was considered to be vexatious.

95. The claimant knew or ought to have known that these actions were likely to lead to a significant escalation and likely dismissal. The Tribunal had already concluded that the claimant's non-appreciation of non-protected characteristic harassment had been remarkable and insincere (paragraph 175 of the Liability Judgment) and the Tribunal concluded that this would have clouded the claimant's perception, of his own making, that he was being treated unfairly, thus leading to the bringing of this claim. Similarly, the claimant's belief that Ms Griffiths-Jones was 'weak' (because of her response to the claimant's emails) and his view that bullying could not be actionable if Dr Tyler had not complained about bullying, because it meant he could absorb it, were equally unreasonable views, which the Tribunal concluded the claimant held at the time (paragraph 301, Liability Judgment). In addition, the claimant had held an absurd view that his grievance against Ms Griffiths- Jones had not caused her to use avoiding behaviour and that she was not intimidated by the tone of his emails and because the claimant had taken out a grievance against her, contrary to her assertions otherwise. The claimant had said he considered this only to have a chronological relevance. The absurdity of that view was unreasonable.

96. The Tribunal had also concluded that the decision to dismiss the claimant was, by a considerable distance, within the range of reasonable responses and the claimant was the author of his own misfortune (page 299).

97. The Tribunal placed significant reliance on the observations of Dr Budd and his exchange with the claimant as set out in the Tribunal's findings in paragraph 85 in detail and the Tribunal's conclusions in paragraph 299. This was the obvious and clear 'check' on whether the claimant was either asserting arguable points or, whether he was going down a wrong path. Dr Budd was a friend of many years and a former union representative who informed the claimant that his actions could have 'devastating consequences' and predicted that unless the claimant changed his actions, his employment could be terminated. Instead of heeding his counsel, the claimant turned on Dr Budd which even led to the claimant taking a grievance out against him, though it was later withdrawn. He also then subsequently raised grievances against Dr Tyler and Ms Griffiths-Jones and many others. This was early on in January 2019 and blew a hole in the claimant's argument that the respondent's application was based on a retrospective view of the case. The Tribunal concluded that the claimant knew, or ought to have known, full well, what the outcome of his stubborn mode of operation was likely to be, a long time before the respondent

considered the claimant to have a disciplinary case to answer. Instead, his position was entrenched (paragraph 294, Liability Judgment).

98. The claimant's attempt to rely on his 'remorse' to challenge the legitimacy of his dismissal was given short shrift by the Tribunal in the liability Judgment. This assertion was wholly inconsistent with conditional apologies, withdrawn apologies and the raising of multiple grievances and grievance appeals against multiple individuals who had decided against him, which incidentally he considered to be outcomes caused by a conspiracy against him for which there was absolutely no evidential basis. In these circumstances, the Tribunal concluded that the claimant knew or ought to have known, contemporaneously, that such assertions would not have any mitigating force.

99. The claimant had relied on comparators who were 'nowhere near alike' (paragraph 296). Ms Paice had provided a witness statement for the claimant, Mr Adams a close personal friend. He knew or ought to have known of the circumstances of Mr Adams who he said was a personal friend of his who he had supported.

100. The claimant did not become aware of the evidence of Ms Coupar until witness statements were taken and exchanged in December 2021 and/or disclosure around then about the additional discussions of Mr Stevenson (paragraph 42 of the claimant's opening note), thus, the claimant did not know this at the time to justify any arguable basis for the bringing of a claim for Unfair Dismissal. When this was made known to the claimant, it did not, in the Tribunal's conclusion lead to any unfairness in the dismissal as it was, on the contrary, evidence the Tribunal had already concluded was not unreasonable or inappropriate and one which Ms Coupar herself accepted as being reasonable. Further, at the appeal stage, the claimant knew an entirely independent appeal panel had rejected the claimant's appeal.

101. In pursuance of the foregoing analysis, the Tribunal had little doubt in concluding, unanimously, that the claimant had brought an unfair dismissal claim which he knew or ought to have known, had no reasonable prospects of success from when the claim was made. The suggestion that this not known at the time by the claimant and was simply the product of the Tribunal's subsequent assessment and conclusions was flatly rejected. This would imply that the claimant had an arguable claim. He did not. It

did of course take the Final Hearing of this claim and the subsequent Costs Hearing for the Tribunal to determine that, but that did not of itself bear any connection to the prospects of, or elevate the merits of, the claim. The risk of running such an unmeritorious claim lay with the claimant.

102. Before arriving at this conclusion, the Tribunal had regard to ***Vaughan v London Borough of Lewisham and others UKEAT /0533/12/SM*** which considered that because a party seeking costs has not sought a Deposit Order or issued a costs warning, is not cogent evidence that the claims had in fact any reasonable prospect of success. In this case a Deposit Order had not been sought. In this case, which had a vast number of internal grievances and appeals with multiple decision makers and further attempts to pursue grievances after the dismissal appeal had been determined, would almost certainly have required more than a one-day Open Preliminary Hearing will little prospect of an Order being made given the sheer weight of evidential analysis required, in a vacuum.

103. The claimant had however, been offered the sum of £50,000 on a without prejudice save as to costs basis. The respondent said it had taken a view in making the offer before witness statements had been exchanged and before all of Eversheds' Costs were incurred, as the respondent was until then, represented by other Solicitors; the offer however was repeated on 17 January 2022, two weeks before trial. In both offers the claimant was forewarned of the risk of a Costs application if the claimant did not succeed at trial. The first offer expressly referred to the offer being a commercial alternative (to the 15-day Hearing), the claimant's 'wholly unreasonable' schedule of loss of £600,000 and the claimant's prospects of success as being low. Neither offer was accepted, no counter-offer was made and there was no movement from the claimant's schedule of loss. As commented on in ***Vaughan:***

"*Alas, it is notorious that the costs of defending a long claim against a persistent claimant can be such that, from a commercial viewpoint, it makes more sense to pay a substantial sum by way of settlement than to pay the lawyers. The present case is a stark illustration."*

104. The Tribunal concluded that the respondent in this case had done exactly that too, to avoid the prospect of a 15-day trial with several senior academics required to give evidence. The offer quite clearly had nothing to do with the merits. Moreover, the Tribunal was as sure as it could ever be,

that a more blunt assessment of the claimant's case would have made no difference. The claimant's position was entrenched from before the litigation started and didn't move one bit. The catchment group of his conspiracy and 'target' audience had simply enlarged through his employment and beyond.

Did the Discrimination claims have no reasonable prospects of success?

105. It was difficult to understand what, if anything, was asserted as being the crux of the claimant's discrimination claims. Various allegations had been made about direct discrimination, harassment and victimisation.

106. The Tribunal had concluded, in its Liability Judgment, that these were rooted in a combination of alleged discriminatory treatment at the hands of Ms Griffiths-Jones for asking to be excluded from the email chain involving the dispute between the claimant and Dr Tyler, an assertion that Dr Tyler's failure to recognise Ms Griffiths-Jones' treatment as discrimination was in itself discriminatory (which only appeared to be articulated in this way during the course of the Hearing) and Dr Tyler's reference to the claimant playing the 'Race card' being cheap and nasty in his notes of 8 March 2019.

107. There were additional allegations against Dr Barker (the claimant referred to Dr Barker's criticism of the claimant not meeting a marking deadline), Ms Leeyou's treatment of the claimant (in relation to being asked to be excluded from emails too) and a general reference to Dr Tyler's criticism of the claimant in his notes of 8 March 2019.

108. The Tribunal had found none of the claimant's asserted protected acts were protected acts. In the Tribunal's view, the most notable conclusions of the Tribunal at the Liability Hearing in relation to the discrimination claims, were in relation to the asserted protected act that the claimant's criticism of the 'race card' comment was disqualified from being a protected act. These were set out in detail in paragraph 207 across 8 bullet points and in paragraphs 208 and 209. The Tribunal had found it was plain and obvious that there was no basis for Ms Griffiths-Jones to ask others to exclude her from the emails. It was clear cut. Ms Griffiths Jones' request was even less than innocuous. The claimant's actions towards Ms Griffiths-Jones had moved from being sarcastic and publicly disparaging

her, to spite before being an act of bullying and harassment when he pursued his grievance. Thus, the Tribunal had concluded it was little wonder why Dr Tyler's response, in context and having regard to the background, was one of frustration and exacerbation. The claimant's view was ill founded and misconceived and notably, the claimant did not pursue Ms Leeyou, a black person, who had done the same thing. The Tribunal has found the allegation of discrimination against Ms Griffiths-Jones and Dr Tyler and his subsequent grievance about Dr Tyler's notes to be cynical and not made in good faith and that he knew, full well, there was no basis for such allegations. They were false and made in bad faith because the claimant dd not believe in them.

109. In paragraph 222 of the Liability Judgment, the Tribunal concluded that the claimant's treatment of Ms Griffiths-Jones was, singularly, the most disturbing and the suggestion that she somehow singled the claimant out was far-fetched and hopeless. It was this which formed the basis of the claimant's discrimination claim which became intertwined with his related discrimination complaints. There was nothing in it and the claimant knew that.

110. In paragraph 245 of the Liability Judgment., the Tribunal had concluded that the claimant knew full well that his discriminatory criticism of Ms Griffiths-Jones and Dr Tyler and his subsequent reaction to Dr Tyler's comments was disingenuous before concluding in paragraph 248 that the claimant's complaint was a cynical attempt to bolster an unjustified complaint which in truth had no racial element.

111. The Tribunal also noted that many of the claimant's allegations about discrimination were casual, unspecific and convoluted – paragraphs 87, 201, 202 and 203 of the Tribunal's Liability Judgment. The Tribunal had also already concluded that allegations of discrimination were serious and could not be left to arbitrary speculation. In making allegations in this way, the claimant undermined his own belief in such assertions.

112. These conclusions were the bedrock of the Tribunal's view of the claimant's discrimination allegations.

113. In pursuance of the foregoing analysis, the Tribunal had little doubt in concluding, unanimously, that the claimant had brought discrimination complaints which he knew or ought to have known, had no reasonable

prospects of success from when the claim was made. The suggestion that this not known at the time by the claimant and was simply the product of the Tribunal's subsequent assessment and conclusions was flatly rejected. This would imply that the claimant had an arguable claim. He did not. It did of course take the Final Hearing of this claim and the subsequent Costs Hearing for the Tribunal to determine that, but that did not of itself bear any connection to the prospects of, or elevate the merits of, the claim. The risk of running such an unmeritorious claim lay with the claimant. More than unmeritorious, the claimant ran discrimination claims which were a combination of being cynical and/or made in bad faith and/or disingenuous and/or allegations the claimant did not believe in and/or which had, in truth, no racial element.

114. The Tribunal's conclusions above in relation to ***Vaughan*** are repeated, with more force in relation to the discrimination claim.

Did the Protected Disclosure claims have no reasonable prospects of success?

115. In paragraph 302 of the Liability Judgment the Tribunal concluded that the claimant was relying on his belief that face to face dissertation supervision was required for part time MA Planning students. The Tribunal concluded that this was his belief at the time and which he maintained in oral testimony. Yet by day 10 of the Final Hearing, the documentary evidence he said he placed reliance on, was not before the Tribunal.

116. This was challenged by the Tribunal head on, when it remarked as follows, during the claimant's cross examination, (paragraph 176 of the Liability Judgment):

"*How can we determine whether or not you have made a protected disclosure without the document you place reliance on? If you knew it to be relevant you would have raised it before, it is now day 10 of this Hearing?"*

117. The Tribunal also found that in a further passage of evidence, the claimant said 'a student must have recourse… there must be some legal redress'. The Tribunal found this to be hopeful or aspirational, but it did not provide any support for a genuinely held belief that the respondent was

in breach of contract and/or which was objectively reasonable. The document the claimant placed reliance upon was not before the Tribunal.

118. During the course of the Hearing, the respondent disclosed an 'Enrolment Terms' document and subsequently a document called 'MA Planning Policy and Practice' document (written by the claimant).

119. In paragraph 177, the Tribunal had found that the claimant appeared to be referring to some other module guide; the respondent said nothing else existed, the Tribunal could not be sure if the claimant was referring to some other document which he had written. He had added that he didn't get disclosure and that there must be some legal redress if students didn't get face to face dissertation supervision.

120. In paragraph 178, the Tribunal had found that the claimant's reliance on the documents in support of his belief had constantly wavered and found there was no other relevant document. Further in paragraph 302, the Tribunal had concluded that as the course Director, there was no-one better placed to produce a or the relevant document than the claimant.

121. Two documents were produced by the respondent but neither of these appeared to be the document the claimant was relying upon. He said he had sought disclosure but did not take the Tribunal to when he had done so (paragraph 15).

122. In pursuance of the foregoing analysis, the Tribunal had little doubt in concluding, unanimously, that the claimant had brought protected disclosure claims which he knew or ought to have known, had no reasonable prospects of success from when the claim was made. The suggestion that this not known at the time by the claimant and was simply the product of the Tribunal's subsequent assessment and conclusions was flatly rejected. This would imply that the claimant had an arguable claim. He did not. It did of course take the Final Hearing of this claim and the subsequent Costs Hearing for the Tribunal to determine that, but that did not of itself bear any connection to the prospects of, or elevate the merits of, the claim. The risk of running such an unmeritorious claim lay with the claimant. The claimant did not produce the key document he placed reliance upon. In fact, his evidence about that had wavered, thus the goalposts of his claim kept changing. As late as day 10 of the Final Hearing, he was advancing his case based on a document yet to be

disclosed or even determined if it did in fact exist. The claimant, as already noted, was the Course Director. The claimant ought not to have brought this clam or abandoned it a long time ago when he knew, evidentially, it was a non-starter. The claimant was essentially on some fishing expedition in the hope that something might come up on to which he could peg his claim for protected disclosure detriment or dismissal.

123. The Tribunal's conclusions above in relation to ***Vaughan*** are repeated.

Did the claimant act vexatiously, disruptively or otherwise unreasonably in the manner in which the proceedings were conducted?

124. The Tribunal had several concerns about the manner in which the claimant had conducted the proceedings:

(a) The claimant interpreted a line of questioning (in cross examination) as being an attack on his mother. The Tribunal had to intervene to inform the claimant that nothing of the sort and been put to the claimant expressly or impliedly. Such was the Tribunal's surprise at the claimant's suggestion, in the Liability Judgment, the Tribunal considered it appropriate to comment on the claimant's credibility/reliability in this regard.

(b) The claimant was Tweeting about his case during the trial. That was not in itself an issue. What was an issue and which was raised with the Tribunal by the respondent, was that he was tweeting/reporting inaccurately, the respondent said, to sensationalise his claim. One tweet was admitted in as evidence as follows:

"I will give evidence that my line manager accused me of being a witch-hunter, I am not, neither am I a witch doctor" (12 February 2022)"

The reference to the claimant being a 'witch hunter' did not feature in any of the documentary or oral evidence in this claim. There was a singular reference in Dr Tyler's notes of 8 March 2019 as follows:

"Issue raised by colleague in 2014 and he hounded all colleagues by email to find out who it was – disrespectful. More concerned with witch -hunting than changing his attitude. Because of this history and his general attitude

including shouting at me when in a project meeting that I kept EI identity anonymous and his aggressive attitude and behaviour around redundancy – my duty of care to my staff.

This was one bullet point within 41 bullet points in 5 sections. The context was abundantly clear and nothing to do with race.

In his witness statement, paragraph 122, the claimant had said that the use of words/phrases: 'aggressive' 'slippery', 'holding Division and students to ransom', 'witch hunting', 'aggressive attitude', 'wet blanket', 'shouted in my face twice', 'blocker', 'bullying', 'cheap and nasty', 'unmanageable', 'bully' and continual harassment were words Dr Tyler would not use to describe a White-British male.

In paragraph 123, the claimant went on to add, that some of these terms were well-known racial or racist stereotypes for black men for hundreds of years since the advent of the 400 year old North Atlantic trade in West African people. The terms he referred to were 'aggressive', 'slippery', 'bully' and 'unmanageable'. He did not mention 'witch hunting'.

The claimant's assertions in paragraphs 122 and 123 were not put to Dr Tyler or any other witness for the respondent. The reference to the phrase 'witch doctory' did not feature in any document, statement or testimony of any witness.

The Tribunal had concluded in paragraph 244 of its Liability Judgment as follows:

These notes contained references back to 2014, when the claimant had sought to ascertain the identity of who had raised a matter about the claimant. This was at a time when Dr Tyler was not Head of Department. The notes referred to the claimant 'hounding' colleagues to find out who had complained about him at that time. The Tribunal concluded this was recollected by Dr Tyler as that it what he felt the claimant had done now too.

The Tribunal concluded that the catalyst for these notes was the claimant's conduct through the dissertation issue and the additional matters raised by Dr Tyler in these notes were not being recollected to gather evidence to use against the claimant, rather the actions of a person who had until then

been restrained and tolerant but which he was no longer prepared to be. None of this was related to the claimant's race.

A disproportionate focus ended up being given to this issue. Ultimately, there was no doubt in the Tribunal's mind that the claimant's reference to being accused of being a witch hunter, which the Tribunal concluded he did to attempt to draw press attention to his claim, was an inaccurate, inappropriate and misleading report of his claim. He did not have the benefit of the Tribunal's judgment at that point, but he did know, that it had not once, featured as a premise for a complaint about the use of that phrase during the many grievances he had initiated and was never a part of his race claim at the Tribunal – in stark contrast to his stand-alone grievance about the use of the term 'race card'. The claimant was highlighting one phrase which appeared in one document amongst several thousand which did not, in reality, form any part of his claims.

(c) The Tribunal has concluded that the claimant's assertions to the Tribunal about what he had discussed with the Legal officer had been dishonest (paragraph 180). This issue was aggravated by the risk of that discussion being tweeted about and thus appearing in a public domain.

(d) The Tribunal has already commented above on the claimant's persistence in refusing to accept that non-protected characteristic harassment was actionable, despite the respondent's policies saying otherwise and well-known principles of bullying and harassment in the workplace. The claimant only accepted this in closing submissions. The Tribunal had commented in paragraph 175:

The Tribunal found that on any reasonable reading/interpretation of the respondent's policies, with well-known principles of bullying and harassment in the workplace, the claimant's evidence in this regard had been remarkable and insincere.

(e) The Tribunal repeats its conclusion above in relation to the protected disclosures claims having no reasonable prospects of success. More specifically, in relation to whether the claimant had conducted the proceedings unreasonably, it was of some concern to the Tribunal that the claimant had not sought disclosure beforehand and/or could not point to when he had requested disclosure, he was instead seeking disclosure whilst the Hearing was progressing before announcing on day 10 of the Hearing,

that the document he placed reliance upon was altogether not before the Tribunal.

(f) On day 1 of the Hearing, the claimant wished to admit a document he said the respondent had omitted from the Bundle. This was the grievance appeal (against the rejection of his first grievance against Dr Tyler) which the claimant said, had overturned the finding that his grievance against Ms Griffiths-Jones was vexatious. When the letter of 5 April 2019 was seen by the Tribunal, it did not support this assertion at all. The Tribunal found this was plain and obvious, in fact it was expressly not adjudicated on as part of the grievance appeal (paragraph 170).

(g) The respondent's application placed some reliance on the claimant's request for documentation and non-agreement of the Bundle. It was a key part of the claimant's assertions too, such that he spent a vast amount of time in oral submissions (at the Costs Hearing) about the unagreed Bundle. The fundamental flaw in the claimant's assertions was that although he produced a supplementary Bundle of around 200 pages, it was not, save on one occasion, ever referred to by him at all through the 12 days (or by any other witness in the proceedings). Thus, by that reason alone, it could not have had any relevance.

(h) On day 10 of the Hearing, the claimant applied to amend his claim to add new allegations of direct discrimination, harassment and victimisation. This was refused as the balance of injustice lay firmly against granting the amendment. The Tribunal commented that the application could have been made a lot sooner and at least since witness statements were exchanged on 21 December 2021 (almost 2 months previously).

(i) The claimant turned down an offer of £50,000 in settlement of his claims. The claimant had then lost each head of claim. It was fair to say, the contest was not even close. Of all the many allegations of detriment/discrimination, only in respect of one allegation did the burden of proof shift although thereafter, the claim failed comprehensively. This was not a case where the claimant could argue he wanted his day in Court to get a declaration. That would only be a sustainable argument, if for example he had succeeded and secured an award of £50,000 or less, but was arguing that it was reasonable to turn it down because it was not accompanied with an admission of liability. That matrix simply didn't arise. All of the respondent's Costs claimed post -dated this offer.

125. In pursuance of the foregoing analysis, having regard to the totality/ cumulative effect of the claimant's actions, the Tribunal was satisfied that the claimant had acted unreasonably in relation to the manner in which he had conducted the proceedings. The sheer volume of instances and the nature of them, which included the claimant being misleading, insincere and dishonest, meant the threshold for the making of a Costs Order was met.

As the threshold for making of a Costs Order has been met in respect of each claim under both applcations, should the Tribunal exercise its discretion to make a Costs award?

126. The Tribunal first considered if it should have regard to the claimant's ability to pay and concluded that it was reasonable and appropriate to do so having regard to the level of the claim for costs.

127. The Tribunal then had regard to the claimant's means and concluded that the claimant had 2 properties, mortgage free, which had a combined equity of not less than £900,000 and up to £1,200,000. Taking a midpoint, the Tribunal concluded a valuation of £1,150,000. The Tribunal noted that the claimant's valuation of his London property was at the very least 175% undervalued.

128. The claimant's income is such that he receives 2 pensions of £1181.80 and £755.96 and rental income of £840.50, net of management fees. The claimant's expenses would reduce by £235 per month as the claimant confirmed, in cross examination, but not on his statement of means, his 'LSBU settlement' monies (in relation to Costs payable to the respondent of a separate Civil claim), would cease in January 2023, taking his surplus income to £979.47.

129. The claimant also had savings of £33,223 and access to a separate pension fund of £113, 962, though subject to some deductions if accessed. He had not disclosed either of these in his statement of means.

130. The claimant lives alone, he has no dependents and expects to do consultancy work in the future.

131. Whilst the claim for costs was significant, the Tribunal concluded that the claimant's means were such that the claim could be met, without causing hardship.

132. The Tribunal had regard to the claimant being a litigant in person. The claimant had however sought the advice/support of a partner in a law firm in Manchester, with whom he said the claim had been drafted. During the Hearing, he also made reference to having the benefit of employment law advice from a friend or friends who were employment law barristers. The Tribunal also concluded that the nature of the claimant's written submissions for both the liability hearing and the Costs Hearing was that it was more likely than not that he sought or been provided with legal advice. His submissions had multiple references to case law which the Tribunal concluded went beyond ordinary internet-based research.

133. Notwithstanding the legal support the claimant had received, ultimately, the claimant did represent himself. The Tribunal considered that it would not be right to judge the claimant by professional standards. However, in assessing whether the claimant's lack of experience or objectivity as a litigant in person had contributed to the reason why the threshold for costs above and been met, the Tribunal concluded it had not; the threshold for costs was met by the claimant's own desire to continue and in fact externalise his internal campaign against the respondent, evidenced through grievance after grievance, appeal after appeal which he had still wished to continue post dismissal appeal. It was likely that the proper context of his workplace issues had not been made known to his family or friends and any legal advice from his support group would have been affected by his own lack of transparency rather than objectivity.

134. The claimant did put forward his ill health to mitigate against the making of a Costs Order. He said that in November 2018 he was taking medication for severe migraines (Sumatriptan). Around the same time, he was taking medication for back pain (Naproxen). He had medication for tension headache in March 2019 (Co-Dydramol and Co-Codamol), he had medication about 2 years ago (around September 2020) for insomnia (Promethazine), two different medications for depression in March and April 2021 (Sertraline and Diazepam) and 2 injections for pain in his left shoulder (Cortisone) 6 months ago and 1 year ago. The Tribunal noted that the taking of this medication was both during his employment around the time of the beginning of the issues, before they had escalated and others

during the course of this litigation. There was no evidence before the Tribunal that there was a causal connection with any culpability or wrong-doing on the respondent's part and no evidence that the claimant's health had contributed to the bringing of the claim or the manner in which he had conducted the proceedings. The letter from Mrs Alison Taylor in particular was rejected by the Tribunal because it was inconsistent with the Tribunal's findings and conclusions in the Liability Judgment and in this Judgment. The Tribunal did conclude however, there was likely to have been some impact on the claimant's health because of the workplace dispute and the because of the litigation. The Tribunal concluded, in principle, that it would be reasonable and proportionate to exercise its discretion to discount any Costs Order by a small amount or percentage to reflect this.

135. The Tribunal had regard to the respondent seeking to limit its costs claim to costs incurred from October 2021 onwards only. It had foregone Costs in the sum of £67,000. The respondent had also not claimed the Costs since the making of the Costs application, included the Costs for the 2-day Costs Hearing.

136. The Tribunal also had regard to the considerable non-financial management and academic time which had been expended on this matter both before (and after) the litigation commenced. The claimant had in fact submitted his own estimate of the cost to respondent pre-litigation in the sum £470,000 (paragraph 143 of the Liability Judgment).

137. In pursuance of the foregoing analysis, the Tribunal concluded unanimously that it should exercise its discretion to make a Costs Order.

Amount of the Costs Order

138. The amount of the Costs Order is the full amount of the costs sought which the Tribunal concluded was at the most around 72% of its total legal costs (or less than that if the legal costs not sought since the making of the Costs application, including the Costs Hearing, were factored in). The Tribunal repeats its conclusions above in relation to the claimant's means. As a result of the respondent not seeking its full costs by a significant percentage, the Tribunal concluded that this off-set any reduction the

Tribunal was prepared to make to reflect some impact on the claimant's health whilst employed and/or whilst bringing the claim.

139. The Tribunal concluded that by reason of the claimant bringing claims which he knew, from the outset, had no reasonable prospects of success and/ or alternatively by reason of the conclusions above in relation to manner in which the proceedings were conducted, which, pursuant to ***Yerrakalva,*** the Tribunal did not need attribute to particular costs incurred, the claimant should pay the respondent's Costs of £174,141 inclusive of VAT, *subject to assessment*. As the sum to be assessed is significant and because it is much more commonplace for Costs Assessment to be undertaken in the County Court, with the attendant experience of doing so, the Tribunal considers that is where the assessment should take place.

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Employment Judge Khalil

25 October 2022

Sent to the parties on:

25 October 2022

For the Tribunal:

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