EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Dr O E Oduwaiye	AND	Royal Cornwall Hospital NHS Trust

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD REMOTELY BY VIDEO **ON** 16 November 2022

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: Miss E Sole of Counsel
For the Respondent: Mr G Powell of Counsel

ORDER

The claimant is ordered to pay the respondent's costs in the sum of £14,500.

RESERVED REASONS

1. In this case the respondent seeks its costs of defending this action against the claimant, and the claimant proposes that application.
2. This hearing was held remotely by video (Video Hearing Service) at the request and with the consent of the parties.
3. General Background
4. The claimant is a qualified doctor but has no legal qualifications. She issued these proceedings against the respondent on 27 July 2020, and the proceedings consisted of four separate claims. She had access to legal advice and assistance from her BMA representative at the outset, but otherwise has acted in person throughout.
5. The claimant's first claim was for direct discrimination because of her race, and the second was for harassment related to her race. She also brought two monetary claims related respectively to unpaid notice pay and for accrued but unpaid holiday pay. The claims proceeded to a full main hearing which was listed for five days. In the event the evidence and submissions were concluded within two days on 13 and 14 December 2021. By written judgment with reserved reasons dated 15 December 2021, which was sent to the parties on 11 January 2022, ("the Judgment"), the claimant's claims were all dismissed.
6. This decision should be read in conjunction with the Judgment. The position in short was as follows. With regard to the claim for direct race discrimination, there was no evidence to support the claimant's allegations, which were also undermined by the contemporaneous documentary evidence. There were clear explanations for the respondent's acts and

omissions upon which the claimant relied, and there was no basis for asserting that the acts complained of were because of the claimant's race.

7. The same allegations were also argued as acts of harassment related to the claimant's race. Again, there was no evidence to support the claimant's allegations, and it was held not to have been reasonable for the claimant to have regarded the alleged conduct complained of as amounting to harassment.
8. It was also clear from the contemporaneous documents that the claimant and her BMA adviser had accepted at the time that the Covid-19 pandemic was the reason for the early termination of her locum contract, which was inconsistent with her later allegations of discrimination. The appropriate contractual notice was given, and this claim was dismissed.
9. Finally, there was some basis for the claimant's accrued holiday pay claim because of the way in which the respondent paid "rolled up" holiday pay. Nonetheless the respondent had made these payments "transparently and comprehensively" and the respondent was therefore entitled to offset them against the claimant's claim. For this reason, this claim was dismissed, although it was arguable that the respondent had acted unlawfully in the manner in which it had made these payments to the claimant.
10. The respondent does not seek recovery of any of its costs in connection with either of the two monetary claims.
11. During the course of these proceedings the respondent wrote to the claimant by letter dated 23 June 2021 which was headed "without prejudice save as to costs". This followed disclosure to the claimant of the majority of the respondent's relevant documents. The respondent asserted in that letter that there was no evidence to support the claimant's discrimination claims, and it gave an outline explanation by reference to the documents as to why it considered that the claimant's discrimination claims would all fail. That letter encouraged the claimant to seek legal advice and to withdraw her claims at that stage, in which event the respondent would not pursue any application for costs. However, that letter warned that if the claimant failed to withdraw her claim then the respondent intended to draw the letter to the attention of the tribunal in support of any subsequent application for its costs. That letter informed the claimant that the respondent had already incurred fees in the region of £10,000 plus VAT, and that future legal fees to defend the matter through to its full main hearing were likely to be in the region of a further £18,000 plus VAT, which included counsel's fees.
12. The claimant did not withdraw her claims, and she confirmed on the following day (24 June 2021) that she intended to pursue all of her claims. Written witness statements were subsequently exchanged in November 2021, and the claim proceeded to its full main hearing. As noted above the claimant's discrimination claims were all dismissed in the Judgment following the full main hearing.
13. <u>The Application for Costs</u>
14. The respondent has made an application for its costs relating to its defence of the discrimination claims in an email letter to the tribunal dated 28 January 2022. Mr Powell has made further submissions today on behalf of the respondent.
15. In the first place the respondent submits that the claimant's conduct has been unreasonable. The respondent explicitly told the claimant in the letter dated 23 June 2021 why her claims were misconceived, and she was invited to withdraw her claims without any consequences as to costs. The claimant did not do so. She was invited to take advice but decided to maintain the discrimination and harassment claims and pursue them to hearing. This was despite the fact that they had no reasonable prospects of success (for which see below), and that they were misconceived. At that time the claimant had to hand the contemporaneous and material documents which she might have needed to review the position in detail. In addition. By the end of June 2021 the claimant had been paid all outstanding wages or pay, and the claim for holiday pay was academic.
16. In addition, the respondent submits that in the light of the Judgment and the contemporaneous evidence and documents, it is clear that the claimant's claims for discrimination and harassment had no reasonable prospects of success. There are a number of reasons for this. It was objectively clear from the evidence that the appointment of locum doctors was expensive are likely to be an expense which could be dispensed with

in a restricted NHS during the pandemic. The claimant had been appointed as a locum to cover a specialist registrar on maternity leave, and her written employment contract expressly provided for termination on the statutory minimum notice. The termination of the claimant's temporary locum employment was a decision made by senior management, and consistent with the treatment of other locum doctors, but despite this the respondent sought to assist the claimant in obtaining on-call accommodation, and an attempt was made to delay the termination of her contract.

17. In addition, the weight of the evidence was always against the claimant and contrary to her own case in the following respects: (i) the claimant was advised by the BMA at the time of the termination of employment, and she did not raise any claims of race discrimination at that time; (ii) the allegation that her employment was terminated by her managers because she was black was entirely inconsistent with the evidence that the senior management of the hospital, who were removed from her immediate management, had made a decision to terminate all of the locum doctor posts in the hospital; (iii) the allegation that the respondent had deliberately chosen to maintain accommodation so it could allocate this accommodation to black and ethnic minority employees was of no substance, and inconsistent with the documentary evidence; (iv) the last two allegations required there to have been a conspiracy or collusion between senior managers with them committing serious or significant acts of gross misconduct, and there was no substance to support such a serious allegation; (v) all locum posts were terminated by the respondent at the time and it was clear from the Judgment that there were no grounds to support the claimant's allegation that she was dismissed because she was black.
18. The claimant resists the application. In an email dated 28 January 2022 she asserts that she believed the discrimination claims to be true and reasonable; that she was not legally represented and that she was therefore in a disadvantageous position as against the respondent; that she complied with all Tribunal orders and therefore acted reasonably; and that the costs application is both unreasonable and unfair.
19. The claimant was represented by Miss Sole today, who made further submissions on behalf of the claimant. In short these are to the effect that even if a tribunal is of the opinion that the bringing or conducting of proceedings is misconceived it does not have to award costs if it is not appropriate to do so. It is for the respondent to persuade the tribunal that the threshold tests for awarding costs are met, and it is not for the claimant to prove the negative. Even if the threshold tests are met, the tribunal must then consider whether to exercise its discretion to award costs or not. It is submitted that the claimant's decision not to withdraw her claims was not unreasonable conduct which would form the basis of a costs award. In addition, the burden of proof on the respondent to the effect that there were no reasonable prospects of success is a high one. The claimant provided examples of conduct upon which she based her allegations, and it cannot be said that there were no reasonable prospects of success.
20. With regard to the discretion to make an award Miss Sole makes the point that the only correspondence alerting the claimant to any deficiencies in her case was the letter relied upon of 23 June 202, and there was no application for a strike out or deposit order. The claimant was acting as a litigant in person and the tribunal should take into account the claimant's inexperience in natural lack of objectivity.
21. The claimant attended today and gave evidence by way of a written witness statement. She was also supported by Ms Flo Gachugi who attended this hearing and adduced a short witness statement. Save for the matters relating to the claimant's means, neither of these was challenged by the respondent, on the basis that this evidence was not relevant to the issues before the Tribunal today.
22. <u>The Rules</u>
23. The relevant rules are the Employment Tribunals Rules of Procedure 2013 ("the Rules").
24. Rule 76(1) provides: "a Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that – (a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or (b) any claim or response had no reasonable prospect of success.

25. Under Rule 77 a party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties. No such order may be made unless the paying party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order) in response to the application.
26. Under Rule 78(1) a costs order may – (a) order the paying party to pay the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party; (b) order the paying party to pay the receiving party the whole or a specified part of the costs of the receiving party, with the amount to be paid being determined, in England and Wales, by way of detailed assessment carried out either by a county court in accordance with the Civil Procedure Rules 1998, or by an Employment Judge applying the same principles …"
27. Under Rule 84, in deciding whether to make a costs, preparation time, or wasted costs order, and if so in what amount, the Tribunal may have regard to the paying party's (or, where a wasted costs order is made, the representative's) ability to pay.
28. The Relevant Case Law
29. I have been referred to and have considered the following cases: Gee v Shell Ltd [2003] [2003] IRLR 82 CA; McPherson v BNP Paribas [2004] ICR 1398 CA; Monaghan v Close Thornton [2002] EAT/0003/01; FDA and Others v Bhardwaj [2022] EAT 97; Vaughan v London Borough of Lewisham [2013] IRLR 713 EAT; Brooks v Nottingham University Hospitals NHS Trust [2019] WLUK 271, UKEAT/0246/18; NPower Yorkshire Ltd v Daley EAT/0842/04; Radia v Jefferies International Ltd [2020] IRLR 431 EAT; Arrowsmith v Nottingham Trent University [2011] ICR 159 CA; AQ Ltd v Holden [2012] IRLR 648 EAT Kapoor v Governing Body of Barnhill Community High School UKEAT/0352/13; Barnsley BC v Yerrakalva [2012] IRLR 78 CA; Topic v Hollyland Pitta Bakery & Ors UKEAT/0523/11/MAA; Kovacs v Queen Mary and Westfield College [2002] IRLR 414 CA; Shield Automotive Ltd v Greig UKEATS/0024/10; and Raggett v John Lewis plc [2012] IRLR 906 EAT.
30. The Relevant Legal Principles
31. The correct starting position is that an award of costs is the exception rather than the rule. As Sedley LJ stated at para 35 of his judgment in Gee v Shell Ltd "It is nevertheless a very important feature of the employment jurisdiction that it is designed to be accessible to people without the need of lawyers, and that in sharp distinction from ordinary litigation in the UK, losing does not ordinarily mean paying the other side's costs …" Nonetheless, an Employment Tribunal must consider, after the claims were brought, whether they were properly pursued, see for instance NPower Yorkshire Ltd v Daley. If not, then that may amount to unreasonable conduct. In addition, the Employment Tribunal has a wide discretion where an application for costs is made under Rule 76(1)(a). As per Mummery LJ at para 41 in Barnsley BC v Yerrakalva "The vital point in exercising the discretion to order costs is to look at the whole picture of what happened in the case and to ask whether there has been unreasonable conduct by the claimant in bringing and conducting the case and, in doing so, to identify the conduct, what was unreasonable about it, and what effects it had." However, the Tribunal should look at the matter in the round rather than dissecting various parts of the claim and the costs application, and compartmentalising it. There is no need for the tribunal to find a causative link between the costs incurred by the party making the application for costs and the event or events that are found to be unreasonable, see McPherson v BNP Paribas, and also Kapoor v Governing Body of Barnhill Community High School in which Singh J held that the receiving party does not have to prove that any specific unreasonable conduct by the paying party caused any particular costs to be incurred.
32. In FDA and Others v Bhardwaj it was held that: "The citation of authority in applications for costs must be strictly constrained to those which genuinely establish a point of principle not apparent from the words of the rules themselves. Costs awards do not operate by precedent. They are fact specific and to be determined as summarily as possible. The expectation must be that nothing more than the words of the relevant rule require addressing before the ET exercises its discretion on the particular facts of the case. When

the threshold requirements for an order for costs are met under rule 76(1)(a) and/or (b) of the 2013 ET rules, it by no means follows that, because it may make a costs order, it will proceed to do so. It has a discretion. The discretion is very broad, and it would require a clear error of principle to justify an appeal, whether for or against an order for costs. In a case involving multiple issues, it will often be unrealistic to hive off some issues from others when addressing whether costs should be awarded and, if so, in what amount. Most cases stand or fall as a whole, even though in many cases there will be some issues on which the losing party is successful or partly successful. Issue-based costs orders are on the whole to be avoided."

33. When considering an application for costs the Tribunal should have regard to the two-stage process outlined in Monaghan v Close Thornton by Lindsay J at paragraph 22: "Is the cost threshold triggered, eg was the conduct of the party against whom costs is sought unreasonable? And if so, ought the Tribunal to exercise its discretion in favour of the receiving party, having regard to all the circumstances?"
34. In Brooks v Nottingham University Hospitals NHS Trust the EAT confirmed that dealing with an application for costs requires a two-stage process. The first is whether in all the circumstances the claimant has conducted the proceedings unreasonably. If so, the second stage is to ask whether the tribunal should exercise its discretion in favour of the claiming party, having regard to all the circumstances. In the case of reasonable prospects of success, the first stage is whether that ground is made out, and if it is, then to apply the exercise of discretion as to whether or not to award costs. When exercising that discretion at the second stage a tribunal can take account of reliance upon positive legal advice which had been received by the unsuccessful claimant, but positive professional advice will not necessarily insulate a claimant against a costs award. In the absence of any evidence as to the actual advice given, and the basis on which that advice was provided, it would be reasonable for a tribunal to assume that a legally represented claimant has been properly advised as to the risks and weaknesses of his or her case, and of the potential for an adverse costs order. Where privilege has been waived, such evidence would ordinarily need to explain the instructions given, the context in which the advice was provided, and the evidence considered.
35. There is considerable overlap between the two grounds in Rules 76(1)(a) and (b). This was analysed by HHJ Auerbach in Radia: [61] It is well established that the first question for a tribunal considering a costs application is whether the cost threshold is crossed, in the sense that at least one of Rule 76(1)(a) or (b) is made out. If so, it does not automatically follow that a costs order will be made. Rather, this means that the Tribunal may make a costs order, and shall consider whether to do so. That is the second stage, and it involves the exercise by the Tribunal of a judicial discretion. If it decides in principle to make a costs order, the tribunal must consider the amount in accordance with Rule 78. Rule 84 provides that, in deciding both whether to make a costs order, and if so, in what amount, the Tribunal may have regard to ability to pay. [62] … There is an element of potential overlap between (a) and (b). The Tribunal may consider, in a given case, under (a) that a complainant acted unreasonably, in bringing, or continuing the proceedings, because they had no reasonable prospect of success, and that was something which they knew; but it may also conclude that the case crosses the threshold under (b) simply because the claims, in fact, in the tribunal's view, had no reasonable prospect of success, even though the complainant did not realise it at the time. The test is an objective one, and therefore turns not on whether they thought they had a good case, but whether they actually did. [63] in this regard, the remarks in earlier authorities about the meaning of "misconceived" in Rule 40(3) in the 2004 Rules of Procedure are equally applicable to this replacement threshold test in the 2013 Rules. See in particular Vaughan at paragraphs 8 and 14(6). However, in such a case, what the party actually thought or knew, or could reasonably be expected to have appreciated, about the prospects of success, may, and usually will, be highly relevant at the second stage, of exercise of the discretion. [64] this means that, in practice, where costs are sought both through the Rule 76(1)(a) and Rule 76(1)(b) route, and the conduct said to be unreasonable under (a) is the bringing, or continuation, of claims which had no reasonable prospect of success, the key issues for overall consideration by the tribunal

will, in either case, likely be the same (though there may be other considerations, of course, in particular at the second stage). Did the complaints, in fact, have no reasonable prospect of success? If so, did the complainant in fact know or appreciate that? If not, are they, reasonably, to have known or appreciated that? [65] I should say something further about how the Employment Tribunal should approach an application seeking the whole costs of the litigation, on the basis that the claim "had no reasonable prospects of success" from the outset. It should first, at Stage I, consider whether that was, objectively, the position, when the claim was begun. If so, then at Stage 2 the tribunal will usually need to consider whether, at that time, the complainant knew this to be the case, or at least reasonably ought to have known it. When considering these questions, the tribunal must be careful not to be influenced by the hindsight of taking account of things that were not, and could not have reasonably been, known at the start of the litigation. However, it may have regard to any evidence or information that is available to it when it considers these questions and which casts light on what was or could reasonably, have been known, at the start of the litigation."

36. The threshold to trigger costs is the same whether a litigant is or is not professionally represented, although in applying those tests, the EAT has held that the status of a litigant is a matter which the tribunal must take into account – see AQ Ltd v Holden in which Richardson J commented: "Justice requires the tribunals do not apply professional standards to lay people, who may be involved in legal proceedings for the only time in their life. As [counsel] submitted, lay people are likely to lack the objectivity and knowledge of law and practice brought about by a professional adviser. Tribunals must bear this in mind when assessing the threshold tests in [rule 76(1)(a)]. Further, even if the threshold tests for an order of costs are met, the tribunal has discretion whether to make an order. This discretion will be exercised having regard to all the circumstances. It is not irrelevant that a lay person may have brought proceedings with little or no access to specialist help and advice." However, Richardson J also acknowledged that it does not follow from this "that lay people are immune from orders for costs: far from it, as the cases make clear. Some litigants in person are found to have behaved vexatiously or unreasonably even when proper allowance is made for their inexperience and lack of objectivity". These statements were approved by Underhill P in Vaughan v London Borough of Newham.
37. With regard to costs warning letters, while it is good practice to warn a claimant of the weakness of his or her case where the respondents may be minded to apply for costs should they succeed at the end of the case, the failure to do so will not, as a matter of law, render it unjust to make a costs order even against an unrepresented claimant.
38. The same approach is to be taken in circumstances where the respondent has not applied for a deposit order. Underhill P in Vaughan also acknowledged that respondents do not always, for understandable practical reasons, seek such an order even where they are faced with weak claims, so that failure to do so "is not necessarily a recognition of the arguability of the claim." On the facts of Vaughan, neither the failure to seek a deposit order nor the failure otherwise to warn the claimant of the hopelessness of her claims was "cogent evidence that those claims had in fact any reasonable prospect of success" and neither failure was "a sufficient reason for withholding an order for costs which was otherwise justified".
39. Ability to Pay:
40. With regard to the paying party's ability to pay, Rule 84 allows the tribunal to have regard to the paying party's ability to pay, but it does not have to, see Jilley v Birmingham and Solihull Mental Health NHS Trust and Single Homeless Project v Abu. The fact that a party's ability to pay is limited, does not, however, require the tribunal to assess a sum that is confined to an amount that he or she could pay see Arrowsmith v Nottingham Trent University which upheld a costs order against a claimant of very limited means and per Rimer LJ "her circumstances may well improve and no doubt she hopes that they will." One reason for not taking means into account is the failure of the paying party to provide sufficient and/or credible evidence of his or her means. The authorities also make it clear that the amount which the paying party might be ordered to pay after assessment does not need to be a sum which he or she could pay outright from savings or current earnings. In

Vaughan v LB of Newham the paying party was out of work and had no liquid or capital assets and a costs order was made which was more than twice her gross earnings at the date of dismissal. Underhill P declined to overturn that order on appeal because despite her limited financial circumstances, there was evidence that she would be successful in obtaining some further employment. Per Underhill P: "The question of affordability does not have to be decided once and for all by reference to the party's means at the moment the order falls to be made" and the questions of what a party could realistically pay over a reasonable period "are very open-ended, and we see nothing wrong in principle in the tribunal setting the cap at a level which gives the respondent's the benefit of any doubt, even to a generous extent. It must be recalled that affordability is not, as such, the sole criterion for the exercise of the discretion: accordingly, a nice estimate of what can be afforded is not essential."

41. Insofar as it does have regard to the paying party's ability to pay, the tribunal should have regard to the whole means of that party's ability to pay, see Shield Automotive Ltd v Greig (per Lady Smith obiter). This includes considering capital within a person's means, which will often be represented by property or other investments which are not as flexible as cash, but which should not be ignored.
42. Under Rule 78(1)(a) a costs order may order the paying party to pay the receiving party a specified amount not exceeding £20,000. Under Rule 78(1)(b) a costs order may order the paying party to pay an amount to be determined by way of detailed assessment, carried out either by the County Court or by an Employment Judge applying the principles of the Civil Procedure Rules 1998. Where the receiving party does not regard the limit of £20,000 to be sufficient an order for summary assessment should not be made in those circumstances, see Kovacs v Queen Mary and Westfield College.
43. Recovery of VAT
44. VAT should not be included in a claim for costs if the receiving party is able to recover the VAT, see Raggett v John Lewis plc which reflects the CPR Costs Practice Direction (44PD). However, on the facts of this case the respondent is in NHS Trust, and is unable to recover the VAT on its costs.
45. Conclusion
46. In my judgment this claim was always inherently weak, but it cannot necessarily be said that from the outset the claim had no reasonable prospects of success. The claimant's allegations were eventually found to have been untrue, and unsupported by the evidence. However, the claimant perceived that she had on occasions received less favourable treatment, and it would not be appropriate to determine, with the benefit of hindsight, that because they were all rejected at the hearing that all of the claims necessarily had no reasonable prospects of success. Although the respondent does not seek its costs in connection with the monetary claims, at the time the claimant commenced these proceedings she had genuine potential claims with regard to the amount of notice pay and the manner in which her accrued holiday pay had been treated. I therefore dismiss that part of the respondent's application on the basis that the claimant's claims had no reasonable prospects of success.
47. However, I do agree with the second part of the respondent's application to the effect that there was unreasonable conduct on the part of the claimant by pursuing and not withdrawing her discrimination claims following receipt of the costs warning letter on 23 June 2021. The reasons are as follows.
48. Although the claimant was a litigant in person, she holds a professional qualification and was well regarded as a competent doctor. She had access to specialist advice from the BMA. She has instructed counsel for today's hearing and could have obtained specialist advice at the time as to the merits of her claim even if she did not wish to pay for continued representation.
49. At the time of the costs warning letter on 23 June 2021 the claimant had before her the relevant contemporaneous documents. She also had a clear warning to the effect that her claims had no reasonable prospects of success, and the respondent would pursue a costs application if the claimant did not withdraw, which she then had the opportunity of doing without any cost consequences.

50. Against this background, and in my judgment, it was unreasonable conduct for the claimant to pursue her claim through to the full main hearing. In particular I bear in mind two very serious allegations. The first is the allegation that her employment was terminated by her managers because she was black. This was entirely inconsistent with the evidence that the senior management of the hospital, who were removed from her immediate management, had made a decision to terminate all of the locum doctor posts in the hospital. The second is the allegation that the respondent had deliberately chosen to maintain second-rate or substandard accommodation so it could deliberately allocate this inferior accommodation to black and ethnic minority employees. This allegation was of no substance, and inconsistent with the documentary evidence. More importantly the claimant pursued these allegations which effectively required there to have been deliberate collusion and discrimination, and effectively deliberate acts of gross misconduct, committed by senior managers at the respondent hospital, including the main Board. There was simply no basis upon which the claimant should have raised and/or pursued such serious allegations.
51. I have in mind the two-stage process outlined in Monaghan v Close Thornton set out above. In the first place I find that the costs threshold is triggered, that is to say the conduct of the party against whom costs is sought was unreasonable. Secondly, in my judgment it is appropriate to exercise discretion in favour of the receiving party, having regard to all the circumstances.
52. In principle therefore the respondent succeeds in its application under Rule 76(1)(a) because the claimant has acted unreasonably the conduct of these proceedings, and it is appropriate to exercise discretion in favour of the receiving party. There are however two limitations. The first is that any costs award should be limited to the time after the costs warning letter on 23 June 2021. Secondly, it would not be appropriate to award any costs which relate to the two monetary claims (and to be fair to the respondent it does not seek recovery of its costs in this respect).
53. The Amount of the Award:
54. The respondent limits its application for costs to the sum of £20,000 in any event, which means that the matter will not proceed to a detailed assessment, but rather falls to be determined by way of a more “broad-brush” approach today. I have seen a schedule of costs prepared by the respondent solicitors, but unfortunately this is not been broken down in such a way that it is clear to ascertain exactly what costs were incurred after 23 June 2021. The costs warning letter at that time does state that £10,000 plus VAT in costs had been occurred at that stage, and an estimate given to continue through to the hearing was a further £18,000 plus VAT.
55. As it happens the final costs incurred by the respondent, and not including this application today, was £28,119.84 together with counsel’s fees for the hearing of £5,250.00, which with VAT of £6,673.97 comes to a total of marginally over £40,000.00. The respondent has then applied a deduction of 8% against this total in respect of fees incurred directly in connection with the two monetary claims which brings the grand total down to £36,840.30. This is more than the estimate of total costs given at the time of the costs warning letter of £28,000.00 plus VAT of £5,600.00, or £33,600.00 in total, less £2,688.00 as the 8% deduction for the monetary claims, giving a total of £30,912.00.
56. It was argued on behalf of the claimant that the respondent’s schedule of costs shows a disproportionate amount of time said to have been spent in preparing and conducting the defence of this claim. For instance, over 60 hours has been claimed for “work done on documents”; 36 hours claimed for preparation for and attending hearings; 47 hours claimed for preparing and reviewing witness statements; 13 hours spent under “consideration of strategy”; and a further 10 hours and so on internal discussions about the case and documents.
57. The hourly rates claimed by the various solicitors and fee earners in the schedule are at agreed reduced rates and are at £86.40 per hour for a paralegal and a trainee, £153.60 per hour for solicitors; and £168.00 per hour for the supervising partner. These all seem to me to be reasonable rates and allowable at that level.

58. I decided that it was proportionate and in the interests of justice to make a summary assessment based on the information which I had, to avoid any further hearings and to achieve finality in this litigation. My estimate for the amount of work properly to be undertaken and allowable from the date of the costs warning letter on 23 June 2021 until the conclusion of the hearing was along the following lines. In my judgment it would require at least approximately 50 hours work, at a reduced solicitor's rate of £160.00 per hour. In general terms this will be made up by the following constituent elements Given the fact that the claimant was unrepresented and raised a number of objections to the proposed bundle of documents, which had to be completed in accordance with the case management directions and then presented to the hearing, I allow at least 12 hours work. There were four witnesses who gave evidence for the respondent against difficult and serious allegations. They would have to be interviewed before their statements could be prepared, and subsequently finalised. I allow a further 22 hours' preparation for this. I also allow a further minimum of 16 hours for reviewing the case, advising and attending the client, and conference with and instructing counsel.
59. I therefore allow the respondent's costs at the level of at least 50 hours at £160.00 per hour plus VAT. This is in the sum of £8.000.00 plus VAT of £1,600.00, and counsel's fees of £5,250.00 plus VAT of £1,050.00, or £15,900 in total. Against this sum I apply a discount of 8% which I think is a fair amount to reflect the work done on the smaller monetary claims and which the respondent does not seek to recover. This gives £14,628 inclusive of VAT, and because we were dealing in general estimates, in my judgment it is appropriate in principle to make an award in the sum of £14,500.00 Before doing so it is appropriate to consider the claimant's means.
60. The Claimant's Means.
61. The claimant has given some evidence as to her means. This includes that she has a number of commitments including a mortgage and school fees and that her monthly income is often exceeded by her monthly outgoings. She owns at least one property, but this is subject to the mortgage. However, despite a request from the respondent she has declined to provide evidence with regard to the value of, or equity in, her home and/or any other properties which she might own. She feels that is an intrusion of her privacy, and she is of course entitled to withhold this information. However, I am only required to take into account such information as I have regarding the claimant's means, which is necessarily limited by reason of her decision not to disclose the further information. She is a qualified professional Doctor who owns her own house and who is capable of commanding a professional wage. Bearing in mind all of the above I do not consider it appropriate to reduce the amount of the potential award because of the claimant's means.
62. Conclusion
63. in conclusion therefore I order that the claimant pays the respondent's costs inclusive of VAT limited to a total of £14,500.00.

Employment Judge N J Roper
Date: 16 November 2022

Judgment sent to Parties: 22 November 2022

FOR THE TRIBUNAL OFFICE