EMPLOYMENT TRIBUNALS

Claimant: **Miss D Harding**

Respondent: **St George's University Hospital NHS Foundation Trust**

Heard at: **London South (Croydon)** **On: 11/9/2023 - 19/9/2023**

Before: **Employment Judge Wright**
Ms J Cook
Ms N Beeston

Representation:
Claimant: **In person**

Respondent: **Ms E Misra KC - counsel**

COSTS JUDGMENT

It is the unanimous Judgment of the Tribunal that the respondent's application under Rule 76 (1)(a) and (b) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, schedule 1 is successful.

The claimant is to pay the sum of £20,000 to the respondent.

REASONS

1. The liability hearing took place over seven days. On the morning of the seventh day, oral Judgment was delivered. After discussions regarding listing a hearing in the claimant's second claim to hear a costs application, the respondent indicated it was considering its position on costs in this claim. At this time, it was late morning on day seven of an eight day listing. If the respondent was going to make a costs application, it was proportionate to hear it within this listing.

2. After discussions, the hearing was then adjourned until day eight and so this gave the parties time to have discussions. Those discussions did not prove fruitful and the hearing resumed and the respondent's costs application was heard.

3. The respondent's application was made under Rule 78 (1)(a) and (b).

4. The respondent provided a 209-page bundle, which it said contained a 'snapshot' of the claimant's unreasonable behaviour.

5. The respondent acknowledged the overlap between unreasonable conduct and the claim having no reasonable prospects of success.

6. Although the respondent's costs exceeded £100,000 (although a detailed breakdown was not provided), it limited its application to the sum of £20,000 and did not seek detailed assessment.

The Law

7. The material provisions of the ET Rules 2013 governing costs applications are excerpted below:

> Rule 74. Definitions
>
> (1) "Costs" means fees, charges, disbursements or expenses incurred by or on behalf of the receiving party (including expenses that witnesses incur for the purpose of, or in connection with, attendance at a Tribunal hearing). […]
>
> Rule 75. Costs orders and preparation time orders
>
> (1) A costs order is an order that a party ("the paying party") make a payment to—
>
> > (a) another party ("the receiving party") in respect of the costs that the receiving party has incurred while legally represented or while represented by a lay representative.
>
> Rule 76. Where a costs order or preparation time order may or shall be made

(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.

(2) A Tribunal may also make such an order where a party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of a party.

Rule 77. Procedure

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.

Rule 78. The amount of a costs order

(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; […]

(3) For the avoidance of doubt, the amount of a costs order under sub-paragraphs (b) to (e) of paragraph (1) may exceed £20,000.

Rule 84. Ability to pay

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.

8. When determining an application for costs, the ET should apply a three-stage approach:

    a. Is the relevant jurisdictional threshold in rule 76 met?

    b. If so, should the ET exercise its discretion in favour of making a costs order?

    c. If so, what sum of costs should the ET order?

9. For the purposes of rule 76(1)(a) the word “unreasonable” is to be given its ordinary English meaning and is not to be interpreted as meaning something similar to vexatious (Dyer v Secretary of State for Employment UKEAT/0183/83).

10. The Tribunal should consider the nature, gravity and effect of the unreasonable etc conduct, but it is appropriate to avoid a formulaic approach and have regard to the totality of the relevant conduct. As Mummery LJ explained in Yerrakalva v Barnsley MBC [2012] ICR 420, CA at §41:

> 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 […]

11. It should, however, be noted that the Tribunal is not confined to making an award limited to those costs caused by the unreasonable conduct. As Mummery LJ confirmed in McPherson v BNP Paribas (London Branch) [2004] ICR 1398, CA:

> 39. Miss McCafferty submitted that her client's liability for the costs was limited, as a matter of the construction of rule 14, by a requirement that the costs in issue were "attributable to" specific instances of unreasonable conduct by him. She argued that the tribunal had misconstrued the rule and wrongly ordered payment of all the costs, irrespective of whether they were "attributable to" the unreasonable conduct in question or not. The costs awarded should be caused by, or at least be proportionate to, the particular conduct which has been identified as unreasonable.
>
> 40. In my judgment, rule 14(1) does not impose any such causal requirement in the exercise of the discretion. The principle of relevance means that the tribunal must have regard to the nature, gravity and effect of the unreasonable conduct as factors relevant to the exercise of the discretion, but that is not the same as requiring BNP Paribas to prove that specific unreasonable conduct by the applicant caused particular costs to be incurred. As Mr Tatton-Brown pointed out, there is a significant

> contrast between the language of rule 14(1), which deals with costs generally, and the language of rule 14(4), which deals with an order in respect of the costs incurred "as a result of the postponement or adjournment". Further, the passages in the cases relied on by Miss McCafferty (Kovacs v Queen Mary and Westfield College [2002] ICR 919, para 35, Lodwick v Southwark London Borough Council [2004] ICR 884, paras 23-27, and Health Development Agency v Parish [2004] IRLR 550, paras 26-27) are not authority for the proposition that rule 14(1) limits the tribunal's discretion to those costs that are caused by or attributable to the unreasonable conduct of the applicant.
>
> 41. In a related submission Miss McCafferty argued that the discretion could not be properly exercised to punish the applicant for unreasonable conduct. That is undoubtedly correct, if it means that the indemnity principle must apply to the award of costs. It is not, however, punitive and impermissible for a tribunal to order costs without confining them to the costs attributable to the unreasonable conduct. As I have explained, the unreasonable conduct is a precondition of the existence of the power to order costs and it is also a relevant factor to be taken into account in deciding whether to make an order for costs and the form of the order.

12. Mummery LJ did not resile from these observations in his later judgment in Yerrakalva, though he did emphasise in Yerrakalva that whilst the Tribunal is not limited to awarding those costs incurred by the receiving party as a result of the paying party's unreasonable conduct, the "effect" of the unreasonable conduct will often be a relevant factor in the Tribunal's exercise of its discretion.

13. In circumstances where the Tribunal finds that the jurisdictional threshold in rule 76 is met, the Tribunal retains a broad discretion as to whether to make a costs order and the amount of any costs awarded. Whilst there is no closed list of factors relevant to the exercise of the Tribunal's discretion, the following factors are often relevant:

    a. Costs orders are intended to be compensatory, not punitive (Lodwick v Southwark LBC [2004] ICR 884, CA). Therefore, the extent of any causal link between the unreasonable etc conduct and the costs incurred will normally be a relevant discretionary factor (Yerrakalva), albeit there is no requirement to establish a causal link between the unreasonable conduct and the costs incurred before an order can be made (McPherson).

    b. The paying party's ability to pay is a factor which the Tribunal is entitled, but not obligated, to consider (see rule 84). Where regard is had to the paying party's ability to pay, that factor should be balanced against the need to compensate the receiving party who has unreasonably been put to expense (Howman v Queen Elizabeth Hospital Kings Lynn UKEAT/0509/12).

c. Any assessment or consideration of means need not be limited to the paying party's means as at the date the order is made. It is sufficient that there is a "realistic prospect that [they] might at some point in the future be able to afford to pay" (Vaughan v London Borough of Lewisham [2013] IRLR 713, EAT).

d. Where the Tribunal does decide to take the paying party's means into account, it must do so on the basis of sufficient evidence (for example by the paying party completing a county court form EX140) (Oni v NHS Leicester City UKEAT/0144/12).

e. There is no requirement to limit costs to the amount the paying party can afford (Arrowsmith v Nottingham Trent University [2012] ICR 159, EAT).

f. The Tribunal may have regard to the means of a party's spouse or other immediate family members (Abaya v Leeds Teaching Hospitals NHS Trust UKEAT/0258/16).

g. Whether a party is legally represented may be a relevant factor. An unrepresented litigant may be afforded more latitude than a party who has the benefit of professional legal advice and representation (AQ Ltd v Holden [2012] IRLR 648, EAT).

14. In Radia v Jefferies International Ltd UKEAT/0007/18/JOJ the EAT said:

> '61. It is well-established that the first question for a Tribunal considering a costs application is whether the costs 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.
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> 62. At the first stage, accordingly, it is sufficient if either Rule 76(1)(a) (through at least one sub-route) or Rule 76(1)(b) is found to be fulfilled. 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 v London Borough of Lewisham [2013] IRLR 713 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 the 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, ought they, reasonably, to have known or appreciated that?

Findings of fact

15. The claimant presented her detailed 38-page particulars of claim on 6/5/2020. The events she alleged were acts of discrimination went back to December 2017. Other than one paragraph, the claimant did not attempt to persuade the Tribunal the events amounted to conduct extending over a period. The Tribunal declined to extend time for the reasons set out in the liability Judgment.

16. The claimant was in breach of the Tribunal's Order of 17/11/2021. She never did provide a witness statement. She said she misunderstood the Tribunal's Order, however, the Tribunal finds that the respondent drew to her attention that she needed to set out her evidence in a written witness statement and that it was not a misunderstanding; rather it was a wilful disregard of the Order. The respondent repeatedly asked the claimant if she intended to provide a witness statement and she ignored the respondent's question.

17. The claimant disclosed her witness' statement to the respondent on the 1/3/2023 (in breach of the Order). When the claimant was asked why she had not included her own witness statement, she said that she had not

appreciated that the Order applied to her. This was despite the Order clearly stating:

> '6.1. A typed **witness statement shall be prepared by the claimant**, any witnesses called by the claimant and by the respondent's witnesses.'

[emphasis added]

18. It is not accepted that the claimant misunderstood this Order. She was repeatedly informed by the claimant that she needed to provide her own statement detailing her evidence. This was disingenuous and unreasonable conduct of the proceedings.

19. At one point, the claimant misled the respondent. She was asked on the 21/8/2023 when she would be ready to exchange witness statements (they had not been exchanged at that point). She replied on the same date (page 194):

> 'I am sorry but due to poor health I am not feeling up to it presently to exchange my witness statement. I am feeling stressed, need some time to heal and get my health improved.'

20. This was misleading and therefore unreasonable behaviour in that not only was the claimant in breach of the Order that statements be exchanged on 31/10/2022; she did not have a witness statement to exchange. In the liability hearing the Tribunal had found that it was not acceptable that the claimant had not at least prepared a draft witness statement, in the 3.5 years since she had presented her claim. It is not accepted that her health prevented her from drafting a witness statement during that period of time.

21. The claimant's unreasonable behaviour is compounded by the matters the claimant did pursue during the course of the litigation, rather than focusing on the claim which was extant before the Tribunal.

22. There was an astonishing debacle over the bundle. The claimant became fixated (the Tribunal has used this word previously in respect of the claimant's obsession with her band 7 role) with clause 3.4 of the Order of the 17/11/2021 which read:

> '3.4. The parties shall provide their documents on the date stated above, but if despite their best attempts, further documents come to light (or are created) after that date, then those documents shall be

> disclosed as soon as possible in accordance with the duty of continuing disclosure.'

23. This was despite that sub-clause being the final sub-clause of clause 3 and at which 3.1 provided:

> '3.1. By **31 March 2022** the parties are ordered to send each other copies of all the documents that they have that are relevant to the claims set out above accompanied by a list of the documents they are sending. This includes, from the claimant, documents relevant to all aspects of any compensation sought.'

24. Any reasonable person would appreciate that the bulk of the disclosure was to take place by the 31/3/2022 and that 3.4 was a 'catch-all' category which dealt with any document which had inadvertently been overlooked. The claimant interpreted it in the alternative and her view was that she need not disclose the bulk of her documents by the 31/3/2022 and could choose when to do so. She disregarded the Order that the respondent was to produce a bundle of the documents by the 30/5/2022 and that it was impossible for it to do so effectively without the claimant's disclosure. Consequently, the claimant's conduct was unreasonable. The respondent had also warned the claimant that her conduct could be considered such.

25. The Tribunal finds that from the point in time at which the claimant was in breach of the Order, that in not providing a witness statement, her claim had no reasonable prospects of success. The claimant's particulars of claim[1], although lengthy, were subject to an Order to provide further information. The claimant's allegations did no more than to raise a protected characteristic (race or disability) and a difference in treatment. The Tribunal accepted the respondent's non-discriminatory explanation or, it accepted the reason why the respondent acted as it did. In the alternative the Tribunal did not accept factually the claimant's version of events. The reason why the respondent took the action in respect of the claimant which it did, was due to her lack of capability and the need to performance manage her. In the alternative, it was due to the claimant not observing normal professional courtesies, such as asking permission to attend a meeting which was not part of her role, rather than informing her line manager she was going to attend (this was against a background of the claimant not meeting deadlines).

[1] The particulars of claim were adopted as the claimant's evidence-in-chief as per the Order of the 7/9/2023 and at the final hearing, the schedule of loss and disability impact statement were also consolidated.

26. It was difficult to see how the claimant would satisfy the burden of proof and then transfer it to the respondent in the absence of a witness statement.

27. The Tribunal therefore concludes that at the point it became apparent the claimant had not produced a witness statement, her claim had no reasonable prospects of success; alongside the unreasonable conduct.

28. As the claimant had not produced a witness statement, accordingly, she did not refer the Tribunal to any documents in the in the 2000+ page bundle. The respondent had made this point to the claimant; that she needed to refer the Tribunal to the bundle via her witness statement. It had also asked her to agree to remove documents from the bundle (irrelevant and duplicate documents). The claimant did not agree. The respondent asked the claimant if she had read the 2000+ page bundle and to confirm that she intended to refer to every document she had insisted be included in the bundle. The claimant did not respond. The respondent was keenly aware of its duty to the Tribunal and considered the bundle (which in hard-copy ran to four lever arch files), was unwieldy.

29. Although the electronic copy of the bundle was sent to the claimant on the 14/3/2023 (it may have been the case the claimant had difficulties in accessing it, however the respondent cooperated with her to resolve that), she would not confirm her home address so that the respondent could send her a hard copy. The claimant was Ordered to provide her home address on the 7/9/2023 and the hard copy was delivered on the 8/9/2023. At the commencement of the hearing on the 11/9/2023 the claimant informed the Tribunal that she had not yet read all of the respondent's witness statements, which were sent to her on the 4/9/2023; it is safe to assume that she had not properly considered the bundle. The respondent's witness statements totalled 57-pages.

30. In the same vein, Ms Misra sent her costs skeleton application to the claimant (and to the Tribunal) at 8pm on the 19/9/2023 (the evening before the costs application was heard). When she arrived at the hearing the claimant told the Tribunal that she had only read up to paragraph 11 of the 30-paragraphs.

31. When the claimant put questions on cross-examination, the Tribunal calculated she referred to approximately 17 documents in the bundle.

32. The failure to comply with the Order regarding disclosure and to co-operate in accordance with the overriding objective was unreasonable behaviour.

33. The respondent expressly said that it did not rely upon Rule 78 (2) (the Tribunal may make a costs Order when a party is in breach of an Order). It may well have done so. The claimant's breaches of the Tribunal's Orders were many, they were not remedied and they were egregious.

34. The claimant was also distracted by two matters, when she should have been concentrating on her preparation for the final hearing. Rather than comply with her duty of disclosure, she chose to send through her disclosure as and when she saw fit. This caused delay in finalising a bundle and put the respondent to additional cost.

35. Around the time of the preliminary hearing in her second claim (her claim was struck out as having no reasonable prospects of success), the claimant became focused upon, (on her case) 'additional supporting evidence to support' her claim of victimisation. In reality, as the respondent pointed out, this was an amendment application (which was ultimately refused on 7/9/2023). The respondent pointed out on numerous occasions that the claimant was seeking to amend her claim, that she could not do so via the list of issues and that she needed to make an application to amend. Not only did the claimant delay making any such application, in her claim form she had set out her position as:

> 'The complaints that now form my claims have been raised via the Respondent's grievance processes. I currently have an outstanding appeal hearing, which has been delayed due to circumstances related to COVID-19. I intend to apply to amend (or, if appropriate, withdraw) my claim after the promulgation of the grievance appeal outcome.'

Clearly, the claimant was aware of and on notice of the possibility of an amendment application in May 2020.

36. The claimant also referred to being told that her 'supporting evidence' could be issued 'up to a week' before the full hearing in September 2023. She also referred to it supporting her victimisation claim. This statement undermines the claimant's position on day one of the final hearing that she understood that she could serve a supplementary witness statement whensoever she chose. Rather than as soon as possible, before the hearing started and before her evidence commenced. The Tribunal does not understand how the claimant came to the conclusion she could serve 'something' as long as it was a week in advance of the final hearing. Even if that was her view, she failed to comply with that requirement.

37. The claimant maintained that she was not seeking to change the basis of her claim, but was seeking to add allegations (page 134). This contradicted what she said about the allegations being supporting evidence and not an amendment application. The respondent was confused about the claimant's stance and rightly so.

38. Another distraction for the claimant from 26/7/2023 was that she sought to postpone the final hearing. Notwithstanding any merit to that application, the claimant was again, repeatedly informed by the respondent that she should continue her preparations for the final hearing as there was no guarantee that a postponement would be granted. The respondent also immediately objected to the postponement application. The claimant must therefore have been aware there was at least a 50/50 chance the postponement would not be granted, or, at least a 50% chance the hearing would proceed.

39. Having found that from the point the claimant decided not to provide a witness statement that the claim had no reasonable prospect of success and that her conduct was on many occasions unreasonable; the Tribunal found that the threshold to consider a costs Order under Rule 78 was met.

40. It then turned to consider whether or not it should exercise its discretion to make a costs award. Ms Misra had submitted that if this was not a case of unreasonable conduct, it is hard to see what would be. This was akin to the time limit point. Without anything asserted by the claimant in respect of the time limits, there being nothing even opaque, if the Tribunal were to somehow read into a time limit extension, simply by a reference to s.123 EQA; there would be no point in having time limits.

41. Equally, if the conduct and the complete disregard of the Tribunal's Order and the steps that were set out to prepare the case for a final hearing were ignored, it would seem there would be little point in putting (certainly) the respondent to the cost of a case management hearing. Otherwise, the Tribunal may as well say to the parties, to prepare as you see fit and then at the start of the final hearing we will see what we have. That is not how the Tribunal's operate and this was the reason for the Case Management Order for Directions.

42. On the 17/8/2023 the respondent sent the claimant a costs warning letter (page 192). The letter contained a section headed 'settlement proposal'. The proposal was that the respondent would not pursue the claimant for the costs in this claim and in the second claim (that application remains

outstanding and the respondent is claiming £8,519). The letter went onto say that Acas would be approached to effect a binding settlement agreement and the letter referred to:

> 'Otherwise please treat this letter as confirmation that if you email the ET by 5pm on 18 August to withdraw your First Claim then the Trust would not then make an application for costs. The Trust will also withdraw its application for costs in your Second Claim provided that you agree not to seek to challenge the ET's decision to strike out the claim, and that this claim can also be considered to be at an end.'

43. What this was offering the claimant was certainty and it removed any risk to her in pursuing the claims. It also obviously avoided the need for any further preparation between the 18/8/2023 and the 11/9/2023 and the need for attendance at and participation in the final hearing. It removed the risk of a costs application in this claim and it was clear the respondent would not pursue costs in the second claim. Although the claimant's complaints would not be tested and determined by the Tribunal, this was more of a disadvantage for the respondent than the claimant. The claimant had not effectively made any link between the allegations and the protected characteristics. It was arguably more of a disadvantage for the respondent not to have the complaints aired, determined and for its individuals to be exonerated; than it was for the claimant to simply walk away. Save for the final preparation and the attendance at the final hearing, the claimant had put the respondent to as much inconvenience and cost as she possibly could do.

44. The claimant was warned the respondent's costs were likely to exceed £100,000 once the barrister's fees were paid in full. The claimant was put upon reasonable notice of the respondent's position and she had a reasonable opportunity to accept a sensible settlement proposal.

45. Accordingly, the Tribunal found that it was appropriate to exercise its discretion and to make a costs award in favour of the respondent.

46. The Tribunal then turned to the sum which should be awarded. The Tribunal heard from the claimant in respect if her means/her ability to pay any costs awarded. The claimant's finances are chaotic. She currently earns £68,500. Her property is worth £200,000 and she is currently remortgaging it for £153,000. That includes a sum to extend the lease. The claimant refurbished her kitchen in May/June 2022 at a cost of around £14,000. She has six loans and an overdraft. The claimant does not have any dependents. The claimant said that she was in deficit each month in the approximate sum of £300. Whereas Ms Misra had calculated that

based upon the figures the claimant had provided, she should have a net balance of around £615 per month.

47. The respondent did not seek its full costs and had capped them at £20,000, hence the Tribunal could assess them summarily. Counsel's fees alone were:

'Preliminary hearing 7/9/2023	£1,750.00
Brief fee final hearing 11/9/2023	£15,000.00
Refresher fee £1,750 x 6[2]	£10,500.00

48. In respect of Counsel's fees alone, the Tribunal finds them to be entirely reasonable. As the respondent has limited its costs, it is not proportionate to consider the solicitor's costs in detail.

49. The Tribunal considered the claimant's financial position. There is equity in her property. She informed the Tribunal the mortgage lender would not loan her anymore money, however it is accepted that on a leasehold property, it would want an equity 'cushion'. It is assumed the property will increase in value over time. Therefore, even if the claimant cannot immediately satisfy a costs Order, there is the prospect she will be able to do so in future.

50. The Tribunal also considered the claimant's financial position. The fact that her finances are chaotic, should not prevent an Order from being made. It cannot be just to Order a claimant who has £20,000 in savings to meet an Order for costs, but not to do so against an impecunious claimant. The claimant earns a decent salary, however she does not appear to be living within her means. This is not however a concern of the respondent in making its costs application.

51. The sum awarded of £20,000 is not only the highest sum which can be summarily assessed, it is also approximately one-fifth of the respondent's total costs. It is the upper end of what the claimant can afford to pay (accepting the claimant may not have any savings), however it is less than one fifth of the respondent's total costs. The Tribunal has already found those costs were artificially inflated by the claimant's unreasonable conduct. If the claimant had adopted a reasonable approach to the bundle and witness statements and had focused on those matters (rather than the superfluous issues she sought to advance) the respondent's costs would have been much lower. The Tribunal finds the capped sum of £20,000 to be a reasonable sum to Order the claimant to pay in the circumstances.

[2] The Tribunal believes this should be multiplied by 7 not 6.

52. The Tribunal reminds itself that costs are compensatory and are not punitive. A costs Order of £20,000, which may not immediate be paid, and which does not cover the entirety of Counsel's fees never mind the solicitor's fees, is a reasonable sum. It does not fully compensate the respondent, although it does avoid the need for any further costs being incurred and the cost and time of detailed assessment.

53. For those reasons, the Tribunal finds the costs threshold is met, it was persuaded to exercise its discretion in favour of the respondent and taking into account the claimant's ability to pay, it was prepared to Order her to pay the capped sum of £20,000.

20/9/2023

Employment Judge Wright