EMPLOYMENT TRIBUNALS

Claimant: Miss M Puar

Respondent: Duncan Lewis Solicitors Ltd

Heard at: Watford **On:** 4 October 2023

Before: Employment Judge Maxwell
Ms Jaffe
Mrs Hancock

Appearances
For the Claimant: no attendance
For the Respondent: Mr Isaacs, Counsel

RESERVED COSTS JUDGMENT

The Claimant is ordered to pay the Respondent's costs in the sum of £20,000.

REASONS

Costs Applications

1. By letter of 12 May 2022, the Respondent applied for a costs order against the Claimant.

2. Following a postponement of the costs hearing on 15 December 2022, the Respondent applied for its costs of that event, by way of an email of 5 January 2023.

Preliminary

3. The Claimant did not attend the hearing today. No communication had been received from her in this regard. We caused the Tribunal administration to telephone the Claimant, several times, but she did not answer. We informed Mr Isaacs of this at the start of the hearing. He indicated that his instructing solicitor had recently attempted to engage the Claimant in preparation for today without

any success. Emails had been sent to the Claimant, as had a physical copy of the cost application hearing bundle. None of this elicited any response from her.

Hearing

4. The Respondent provided a bundle of relevant documents running to 316 pages and a skeleton argument in support of the costs application. We received oral submission from Mr Isaacs and reserved our decision. The Claimant did not attend and made no representations.

Law

5. So far as material, rule 76 provides:

> **76. When a costs order or a 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; or**
>
> **(c) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which the relevant hearing begins.**

6. A two-stage test applies before deciding to make an award in principle:

   6.1 whether the threshold for a costs order under rule 76 is satisfied;

   6.2 whether, in the circumstances of the case at hand, it is appropriate to make an order for costs.

7. As to the amount is a case where it is appropriate to make an award, the Tribunal may take into account:

   7.1 the means of the paying party (although the immediate inability to pay may not prevent an order being made);

   7.2 the reasonableness of the costs incurred by the recipient.

Reasonable Prospects

8. The questions of whether a response had no reasonable prospect of success and whether it was unreasonable to pursue the same, were considered by the EAT in **Opalkova v Acquire Care Ltd EA-2020-000345-RN** per HHJ Tayler:

> **22. Determining that a response did not have a reasonable prospect of success or that a respondent acted unreasonably in defending the claim and/or in maintaining the defence is a threshold that results in the tribunal**

having a discretion to make a cost or preparation time order. As HHJ Auerbach noted in Radia v Jefferies International [2020] IRLR 431:

> **"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 r 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 r 78. …" [Original emphasis]**

23. HHJ Auerbach considered the overlap between a claim or response having no reasonable prospect of success and unreasonable conduct:

> **"64. This means that, in practice, where costs are sought both through the r 76(1)(a) and the r 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?"**

24. Accordingly, there are three key questions. First, objectively analysed when the response was submitted did it have no reasonable prospects of success; or alternatively at some later stage as more evidence became available was a stage reached at which the response ceased to have reasonable prospects of success? Second, at the stage that the response had no reasonable prospects of success did the respondent know that was the case? Third, if not, should the respondent have known that the response had no reasonable prospect of success?

25. These questions are relevant whether the matter is analysed on the basis that the response had no reasonable prospects of success or that the respondent was guilty of unreasonable conduct in defending or maintaining the defence to the claims. The relevance of the questions differ between these two grounds for making a preparation time order. The question of whether a response had reasonable prospects of success is objective and is the threshold for making a preparation time order under Rule 76(1)(b) ET Rules, even if the respondent was not aware, and should not reasonably have been aware, that the response had no reasonable prospect of success. However, the lack of understanding of the merits of the response would be relevant, along with other matters, to the discretionary question of whether a preparation time order should be made. The questions of whether the respondent knew that the response had no reasonable prospects of success, or should reasonably have known, are relevant to the threshold question for a preparation time order on the basis that defending, or maintaining the defence, to the claim was unreasonable conduct for the purposes of Rule 76(1)(a) ET Rules; after which the discretion to make a preparation time order has to be applied considering all relevant factors. Whichever of the two provisions is

> **applied it is hard to see that the result will be different. However, the matter must be analysed properly.**
>
> **26. In considering whether the respondent should have known that a response had no reasonable prospects of success, a respondent is likely to be assessed more rigorously if legally represented: see for example Brooks v Nottingham University Hospitals NHS Trust UKEAT/0246/18/JOJ, at paragraph 3.**

9. The approach set out in **Opalkova** applies equally where the Claimant's claim is said to have no reasonable prospect of success and the relevant questions would, therefore, be whether:

   9.1 objectively, the claim had no reasonable prospect of success;

   9.2 subjectively, the Claimant knew that was so;

   9.3 if not, they ought reasonably to have known.

Vexatious

10. The question of whether a party had acted vexatiously was addressed in **Attorney General v Barker [2000] EWHC 453** per Bingham LCJ:

> **19. […] "Vexatious" is a familiar term in legal parlance. The hallmark of a vexatious proceeding is in my judgment that it has little or no basis in law (or at least no discernible basis); that whatever the intention of the proceeding may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process. […]**

Discretion

11. Even where the threshold for an award of costs has been met, the Tribunal must still consider whether in its discretion such an award is appropriate; see **Barnsley MBC v Yerrakalva [2011] EWCA Civ 1255**, per Mummery LJ:

> **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. The main thrust of the passages cited above from my judgment in Mc Pherson was to reject as erroneous the submission to the court that, in deciding whether to make a costs order, the ET had to determine whether or not there was a precise causal link between the unreasonable conduct in question and the specific costs being claimed. In rejecting that submission I had no intention of giving birth to erroneous notions, such as that causation was irrelevant or that the circumstances had to be separated into sections and each section to be analysed separately so as to lose sight of the totality of the relevant circumstances.**

12. A potentially relevant factor in connection with the exercise of this discretion may be whether, when and if so in what terms the other party sent a costs warning letter. This point was considered, in passing, by the EAT in **Vaughan v LB Lewisham UKEAT/0533/12/SM**, per Underhill P:

> **18. We do not believe that as a matter of law an award of costs can only be made where the party in question has been put on notice, by the making of a deposit order or otherwise, that he or she is at risk as to costs. Nor, however, do we believe that the absence of such notice, or warning, is necessarily irrelevant: indeed it was expressly relied on in a recent decision of Mr Recorder Luba QC as one of the reasons for not exercising a discretion to award costs under the cognate jurisdiction in this Tribunal – see Rogers v Dorothy Barley School (UKEAT/0013/12), at para. 9. What, if any, weight it should be given in any particular case must be judged in the circumstances of that case; and it is, as we have already observed, regrettable that the Tribunal does not expressly address the question.**
>
> **19. In our view the fact that the Appellant had not been put on notice was not in the present case a sufficient reason for withholding an order for costs which was otherwise justified. In the first place, we do not believe that it would be just to deprive the Respondents of an award of costs because they had not sought a deposit order: there may, as discussed above, be good reasons why a party may prefer not to take that course. If there is any criticism, it could only be that they did not write to her at an early stage setting out the weaknesses in her claims and warning that a costs order would be sought if they failed. But what is significant is that the Appellant at no stage in her submissions to the Tribunal or before us asserts that if she had been given such a warning she would have discontinued her claim; and nor in any event does it seem to us that any such assertion would have been credible. She was, as the Tribunal emphasises, convinced, albeit without any rational or evidential basis, that she was the victim of a conspiracy and of a serious injustice, and it seems to us highly unlikely that a letter from the Respondents, however well-crafted, would have caused the scales to fall from her eyes.**

Conclusion

Unreasonable Conduct

13. The Claimant has conducted these proceedings unreasonably, almost from their inception. We recited the procedural history in our reserved judgment on liability.

14. The Claimant failed to attend a preliminary hearing on 1 June 2017, sending an email at 5.30pm the night before saying she could not attend because she was starting a new job. The Claimant must have known this communication was sent too late for it to be effective in preventing a waste of time and resources on the part of both the Respondent and the Tribunal. The Claimant has a LLB and passed the Law Society's professional exams. She has been working in law firms for many years, attempting to obtain a training contract. Whilst not a qualified solicitor, she is very familiar with litigation, preparing cases and attending court hearings, including as an advocate. In addition to her professional life, she has also brought proceedings in her personal capacity. As a result, the Claimant must be well aware that by 5.30pm, the Respondent would

have made arrangements for a representative (Counsel or a Solicitor) to attend the Tribunal and a judge assigned to conduct the hearing. Furthermore, if the Claimant was starting a new job that day, it is exceedingly unlikely she had only learned of this at or shortly before 5.30pm the day before. This was unreasonable behaviour.

15. Because of her non-attendance, the preliminary hearing was relisted. EJ Manley did, however, make an order for the Claimant to provide further information. The Claimant did not comply with that order. An unless order was made and the Claimant did not comply with that. Her claim was struck out and notice of this sent to the parties on 18 August 2017. The same day as that notice was sent, the Claimant applied for the strike out to be set aside and this was subsequently granted. Ignoring the order for further information was unreasonable. Acting only when her claim was struck out was unreasonable. This conduct tended to waste the time of the Respondent and Tribunal.

16. Following a substantial expansion of the Claimant's claim, orders were made on 22 January 2021 for disclosure and the agreement of a document bundle. We have already made extensive findings (for the purpose of determining the Respondent's strike out application) with respect to the Claimant's unreasonable behaviour with respect to the disclosure of documents and bundle preparation. Those findings are relevant to this costs application and we repeat them (see in particular, paragraphs 24 to 57 and 91 to 106 of our liability decision).

17. Notably, following her unreasonable behaviour between March 2021 and February 2022 the Claimant then applied for a postponement on the basis she was not prepared for the final hearing. This was unreasonable. The Claimant also made an application for postponement based on ill-health which was not substantiated and we refused. The impression created by the Claimant's behaviour was that she was keen to have the Respondent as a party to a vast discrimination claim, yet reluctant to undertake necessary preparation or attend a final hearing.

18. Whilst she intermittently referred to her health again during the liability hearing, her representations were inconsistent and often contradicted by her behaviour. She said she was suffering tiredness yet was vigorous in her advocacy throughout the day, even suggesting sitting late. She said she could not find a document because of problems with her vision, when it was evident this was the product of disorganised paperwork on the desk in front of her.

19. The Claimant conducted the hearing in an unreasonable manner. She was frequently, rude, disruptive or irrelevant (see paragraph 144 to 150 of our liability decision). It was necessary for the Judge to intervene and remind the Claimant of the ground rules for the hearing, repeatedly. Despite occasional improvements in the Claimant's behaviour, these were short-lived. The Claimant's conduct would have been unacceptable for any party but was all the more surprising given her professional background. She is exceedingly familiar with attending court hearings, including as an advocate, and must know what is expected.

20. Most recently, the Claimant conducted herself unreasonably with respect to the hearing of the Respondent's costs application in December 2022. By reason of

an oversight, the matter had been listed before the Judge only and not with the members. The application could, however, still continue if the parties consented. They were contacted the day before and agreed to proceed in this way.

21. On the morning of the costs hearing in December 2022, in the circumstances set out in the case management order made on that occasion, the Claimant failed to attend. Firstly, she emailed to say her car would not start and she would be late. We note the Claimant only lives in Luton and had she simply decided at that point to come instead by public transport, it would not have taken very long. Whilst she may not have been in Watford for a 10am start, she would not have been very late. Instead, according to her later email, she simply waited and tried her car again. We pause to note that unless she called out a mechanic, it is difficult to see what reason she could have for believing that a starting fault would be spontaneously remedied. Even at 9.39am, had she then set out by bus and / or train, she would still have been with us in the morning. Instead, she stayed put. The hearing was then converted to CVP, so as to accommodate her reported difficulties with travel. The Claimant did not, however, attend. When the Tribunal administration contacted her again, the Claimant had a new reason for non-attendance, namely not trusting EJ Maxwell. Without the Claimant's consent, which she then appeared to withdraw, the hearing could not go ahead as judge sit alone. The Claimant did not advance any reason for EJ Maxwell to recuse himself, then or since. The Claimant's stance toward whether, when and how she would attend this hearing was unreasonable. The inference we draw as that she did not wish to attend the hearing and sought to frustrate the process.

22. We note that despite requesting an in-person hearing of the Respondent's costs application and the matter being relisted in that way today, the Claimant did not attend. She had not given any reason for being absent. She has failed to respond to communication from the Respondent or Tribunal. This appears to be part of a pattern whereby the Claimant chooses whether and if so to what extent she will participate in these proceedings, irrespective of inconvenience to the Respondent or Tribunal.

No Reasonable Prospects

23. The Claimant's claims had no reasonable prospects of success, for the reasons given in our liability decision. There were two main reasons for this. Firstly, there was no evidence to show that any of the treatment she complained of was because of race, with respect to the two individuals she said had discriminated against her. She also had no answer whatsoever for why substantially the same concerns and accounts of her behaviour should have emerged from others who were not accused of discrimination and / or shared the Claimant's protected characteristics. Secondly and separately from the absence of evidence to prove that which the Claimant needed to, there was overwhelming evidence which tended to show a non-discriminatory reason for the matters she complained of (to such extent as these occurred) namely her own misconduct and poor performance. The notion that Mr Bruce had been motivated to determine the grievance appeal as he did because of a single paragraph alleging discrimination, buried in the Claimant's lengthy written submissions, was always fanciful and this is reflected in her failure even to put the point to him. The Claimant's thrust at the hearing appeared to be one of fairness but she did not have an unfair dismissal claim and was frequently reminded of this.

Vexatious

24. The Claimant's approach to this litigation was most unusual and at times difficult to manage. Her engagement has been intermittent and, as set out above, whilst she was keen to grow and keep her claim alive, she sought to avoid a final hearing. At least in part, her motivation appears to be to cause inconvenience to the Respondent. Our conclusion is that she wanted to keep the prospect of a large discrimination claim hanging over the Respondent without allowing that to reach a conclusion. She knew the Respondent wished to push this forward and she sought to hold it back. This is, largely, the reason why we are adjudicating on a costs application circa 7 years after the events complained about. The purpose of Tribunal proceedings is to allow for a claim to brought and adjudicated upon, not to provide a forum for perpetual procedural wrangling. In her non-attendance at hearings, non-compliance with orders and late postponement applications, the Claimant has been vexatious.

25. There was also vexatiousness in the way the Claimant approached several of the Respondent's employees. Serious allegations of impropriety and / or dishonesty were put, without evidence or logic. The Claimant persisted in this despite being reminded her claims were for discrimination and with respect to the appeal, victimisation. The Respondent's witnesses are legal professionals for whom allegations of this sort could have serious ramifications. There was no need for the Claimant to proceed in this way. Our conclusion is that she wished to vex these individuals. She sought to provoke them and exacerbate the situation. She misused the Tribunal process to achieve this end.

Threshold

26. The threshold for making an award of costs is satisfied in this case by reason of:

    26.1 the unreasonable way in which the Claimant has conducted the proceedings;

    26.2 the Claimant's claims had no reasonable prospect of success;

    26.3 the Claimant has engaged in vexatious conduct;

    26.4 it was unreasonable for the Claimant to pursue her claims because she knew or ought reasonably to have known they had no reasonable prospect of success.

Discretion

27. We have decided this is an appropriate case in which to make an award of costs because of:

    27.1 the nature, extent and duration of the Claimant's unreasonable conduct;

    27.2 the Claimant persisting in unreasonable conduct despite frequent judicial intervention;

    27.3 the complete lack of merit in her claims;

27.4 the Claimant has been vexatious;

27.5 the Claimant was warned by the Respondent her claims had no reasonable prospect of success and given the opportunity to withdraw them;

27.6 the Claimant knew or ought reasonably to have known her claims had no reasonable prospect of success.

28. Given her extensive experience in litigation, the Claimant knew or ought reasonably to have known that it will not suffice for a Claimant simply to make an assertion that some wrong has been done to them. The elements necessary to establish that wrong must be established with evidence. There was no evidence here to show that the reason for the treatment complained of was race or religion, or in the case of the appeal outcome, victimisation. The Claimant must have known there was nothing of the sort. Notably, the Claimant failed not only to put her case to relevant witnesses (i.e. "you did [X] to me because I am British Indian or Sikh") but also she did not put to them evidence which she said showed that her race or religion influenced her treatment (i.e. "what you wrote in the document at page [Y] shows that you were hostile because I am British Indian or Sikh"). The obvious reason for this failure was that not even the Claimant believed the evidence tended to show that she had been discriminated against. If there had been any such material, we have no doubt the Claimant would have put this to witnesses and relied on it in her submissions.

29. Similarly, the Claimant must have known there was a vast body of documentary evidence which tended to show a non-discriminatory reasons for the treatment she complained of, namely concerns on the part of colleagues and managers about her performance and conduct in the workplace. The Claimant's evidence on this point was entirely unconvincing. She maintained a steadfast denial throughout, not only of there being any issues with her performance but also of the fact of them being raised with her. This latter point was incontrovertible. The Respondent's considerable and growing concerns with the Claimant were raised with her time and time again, both orally and in writing. Furthermore, this point could be established from the extensive correspondence trail in the hearing bundle. Even when the Claimant was taken to many documents in which her employer complained about her work or conduct, she denied there was any criticism. This was absurd. What the Claimant was saying was directly contradicted by the written information in front of her. She did not offer any different interpretation of this material, she simply ignored it. The Claimant must have known that her position – no concerns were ever raised about my performance – was simply untrue. Whilst she might disagree with the merits of those concerns that is a separate matter. As set out in our liability decision, the distinction between whether a complaint was justified and whether it had been made was not lost on her.

30. Even if the Claimant had been unaware of the deficiencies set out above, which we do not accept is likely, these problems were drawn to her attention by the Respondent.

31. By a letter of 14 February 2022, the Respondent wrote to the Claimant, without prejudice save as to costs:

We are of the considered opinion that, now all evidence relating to this case has now been disclosed, it is evident that your claims have no reasonable prospect of success for the reasons set out below. Consequently it would be unreasonable for you to continue pursuing these claims.

We would highlight that, given the nature of the claims raised, the burden of proof lies with you in the first instance, as the claimant in this case. This means you must be able to establish that you were the subject of discrimination. The Respondent will only have to prove that you were not subjected to discrimination in the event you are able to demonstrate facts that would, in the absence of any other explanation give rise to an inference that you were discriminated against. It is our view that you will be unable to make such a case.

- **Race and Religious Discrimination: Your entire case is based entirely on the premise that there have historically been tensions between Pakistani Muslims and Indian Sikhs.**

- **You have provided no evidence to demonstrate that this had any impact whatsoever on your relationship with the Respondent or the Respondent's employees. There is consequently no basis for your discrimination allegation.**

- **You have sought to rely on this basis for race discrimination in all but one allegation. This is despite the fact only two of the Respondent's former employees against whom you have made allegations are Pakistani Muslims, which you have alleged to be the reason for the alleged discriminatory treatment against you as an Indian Sikh. Even in the highly unlikely event you would be able to succeed in claims against that employee, your claims relating to all other employees who do not come from either a Pakistani Muslim background, including claims in respect of your dismissal, are therefore bound to fail.**

- **The vast majority of your claims are solely based on alleged oral comments and there is no evidence to support your version of events that any such comments were made. It will be your word against that of the Respondent's employees, who as per their witness statements, deny that the alleged events occurred at all and further deny that these comments were made because of your race or religion. It is our opinion that you will not be able to succeed with any such claims.**

- **Your claim fails to take account of the overwhelming issues with your conduct and capability, which are documented consistently throughout the bundle and the Respondent's witness statements. There is also clear evidence that you were warned of these problems throughout your employment with the Respondent. From the existence of these issues and the supporting evidence, it is clear that the sole reasons for your dismissal were capability and competence. These issues and the evidence also demonstrate the fact the Respondent's witnesses are being truthful in their explanations of any disputes that may have occurred.**

- **Your allegations have been inconsistent and lacked detail throughout your appeal against your dismissal and these proceedings. It is our view that this demonstrates the lack of veracity of your claims.**

Please note that the above list is not exhaustive. These points will of course be elaborated upon within our client's witness evidence, but we consider that you have no reasonable prospects of overcoming these significant flaws in this claim.

However, notwithstanding the strength of our position, our client is keen to ensure that it acts proportionately. In the circumstances, it is prepared to provide you with the opportunity to withdraw your claim, in return for which it will not seek an award of costs against you.

We submit that this offer is very reasonable on the basis that you have no reasonable prospects of success and in the highly unlikely event that any of your claims do succeed, they are of very limited value. As your claim regarding your dismissal is bound to fail, we contend that you will not be entitled to claim any compensatory award. You are not entitled to a basic award, thus the value of your claim will be limited to an injury to feelings award which in our view would be at the bottom end of the Vento bands in any event. Consequently our offer not to pursue you for costs is an entirely reasonable one.

This offer cannot be unlimited in time, however, and accordingly we believe it is necessary and appropriate to set a deadline for the acceptance.

32. The Respondent's letter was drafted in appropriate and reasonable terms. It identified the key deficiencies and reasons why the Claimant's claims would not succeed. It was not cast in draconian terms. It offered the Claimant a simple way out but warned that costs would be pursued if she continued and failed.

33. The Claimant rejected this invitation to withdraw. In her email to the Tribunal of 17 November 2022, she wrote:

> **[…] The Respondents are threatening the Claimant with costs as their continuing advise to their clients is the low merits of the Claimants case, the Claimant avers that once the disclosure is granted the situation would be otherwise. The Respondent is being hostile and unreasonable, using its best endeavours to win a case by failing with full and frank disclosure.**

34. Whilst the Claimant refers to disclosure and appears to suggest that this will prove her case, she does not say what it is that will be uncovered and have this effect. Her remark is vague and speculative. By an email of 17 February 2022, the Respondent repeated its offer, albeit this time offering her £1,250. A final offer, expressly in the form of a 'drop hands' was made during the final hearing after the Claimant had given evidence. The Respondent drew to the Claimant's attention the Tribunal had already found her conduct unreasonable in some respects (i.e. with respect to disclosure and the document bundle).

35. As set out above, the Claimant knew or ought reasonably to have known of the lack of merit in her claims. Separately from whether she had identified this for herself, it was drawn to her attention in clear terms. At no stage did the Claimant

engage with the difficulties the Respondent had identified in any meaningful way. She simply ignored these proper points.

36. The Claimant has embroiled the Respondent in a vast unmeritorious claim over a number of years. She has proceeded with it against the merits, which either were or ought reasonably to have been apparent to her. She has been rude and disruptive. At times she has sought to do that which is most likely to frustrate and inconvenience the Respondent. She has acted both unreasonably and vexatiously. She was given proper opportunities to withdraw from this and failed to do so. We are satisfied it is appropriate and in the interests of justice to make an award of costs.

Amount

37. The Respondent has put forward a calculation of its costs in excess of £40,000. This is not a detailed bill of costs and appears to us as possibly involving an underestimate. Given the volume of substantive documentation, party correspondence and hearings, the solicitor's profit costs of circa £15,000 appear very modest. The sums included with respect to Counsel's fees also appeared to be less than that for which he had billed, which could be found separately in the bundle of documents. There was nothing unreasonable about the costs figures in which the Respondent's two costs applications were made. In any event, the Respondent capped its application at £20,000 in total and was, on any analysis, seeking less than half of the costs incurred. In a case such as this, where the entire claim was without merit and the Claimant knew or ought reasonably to have done so, it would have been appropriate to award the entirety of the costs reasonably incurred. We are easily satisfied that £20,000 is a proper sum to award.

38. The only other consideration would have the Claimant's ability to pay. A case management order was made requiring the Claimant to provide a statement of means and supporting documentary evidence, if she wished for this to be taken into account by the Tribunal when determining the question of costs. The Claimant presented nothing in this regard, whether by the deadline set or at all. As at the last hearing the Claimant was in employment. She has a history of employment with solicitor's firms as a case worker or (non-qualified) advocate in cases where rights of audience are not required. We would expect her to have some disposable income. In the absence of evidence, we have been provided with no reason to conclude the Claimant would not be able to pay these costs. We note that even if she did not have the sum of £20,000 immediately, there is no reason to suppose she would not be able to pay this as a result of future earnings and employment. In any event, the Claimant has had ample opportunity to advance evidence in this regard and has chosen not to. It would not, therefore, be appropriate to reduce an award in an otherwise reasonable sum of £20,000.

Employment Judge Maxwell

Date: 30 October 2023

Sent to the parties on:
31 October 2023

For the Tribunal Office: