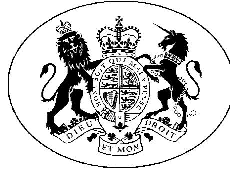

EMPLOYMENT TRIBUNALS

Claimant: Mr M Ithia

Respondent: (1) MUFG Securities Ltd
(2) M Conway

Heard at: Central London Employment Tribunal
On: 27 and 28 November 2023

Before: Employment Judge Keogh, Ms S Campbell, Mr D Clay

Representation
Claimant: In person
Respondent: Ms T Barsam, Counsel

JUDGMENT

1. The claimant is ordered to pay 20% of the respondents' costs of the claims, excluding any costs relating to equal pay matters which are yet to be determined, as have been incurred on or after 19 January 2022, subject to a detailed assessment by an Employment Judge on a standard basis.

2. Deposits paid in respect of those claims in the sum of £800 shall be paid back to the respondent and the sum of £800 deducted from the sum ordered to be paid under paragraph 1.

REASONS

1. This hearing was listed to determine the respondent's application for costs following the dismissal of all of the claimant's claims, save for those in respect of equal pay which have not yet been determined. We received very full bundles and a Skeleton Argument from the respondent. The bundles included the claimant's written response to the application. We heard oral submissions from both parties. We read and considered all the documents we were referred to in submissions, together with others which we considered relevant.

2. At the outset of the hearing the claimant did not have a copy of the bundles with him. The respondent indicated that the bundles had been sent to the

claimant by recorded delivery and were signed for. Proof of delivery was provided showing documents signed for on 8 November 2023 and 21 November 2023. The Tribunal was referred to correspondence date 18 November 2023, received by the respondents on 23 November 2023, indicating that the claimant could not use the bundles as they had been amended, had not been provided in the correct format and that there were documents missing. The claimant clarified that the bundles arrived broken, in that he could not turn the pages. The 'amendments' were in respect of the anonymisation of employees. As to the missing documents, he took the Tribunal to various letters in the bundle which listed documents he sought to rely on for the hearing, some of which were missing from previous bundles. He indicated that these documents contained material which showed unreasonable conduct by the respondents, for example delays in undergoing mediation. The respondent accepted that some pages had been missing, but that the full documents of relevance had now been included in the costs bundle. In respect of the delay to the start of mediation, this was because a List of Issues had not been agreed. The mediation nevertheless took place in 2021. The respondent confirms that a specific letter which the claimant says is missing dated 5 January 2023 was not in fact received. We have now received a copy of that letter in any event as it was appended to the letter of 18 November 2023. The claimant was told in the respondent's response to the letter of 18 November 2023 that if there were documents he wanted to rely upon which were not in the bundle then he should bring copies to the hearing. The respondent was of the view that the claimant was attempting to derail the hearing, and referred to previous instances of the claimant having made similar allegations. The Tribunal notes that the claimant brought a small file for his own use at the hearing but did not bring any documents for the Tribunal. The Tribunal was asked to determine:

(i) Whether the hearing should be delayed for the claimant to be given an unredacted bundle;

(ii) Whether the hearing should be delayed for all of the documents said to be missing to be located and added to the bundle.

3. In relation to the first issue, the Tribunal considered it would be wholly disproportionate to delay this hearing for the provision of a 'clean' bundle. It is not understood why the claimant, on receipt of the bundles, could not simply put them into another set of files so he could read them more easily. Only one example was given of the redactions made, which simply replaced the name of a particular employee with a coded name, as used throughout the liability hearing. There is no reason why, for the purpose of determining a costs application, the Tribunal would need to know the name of anonymised employees. The claimant has had the code previously and knows who is being referred to, and the Tribunal cannot see why the claimant would need to have an unredacted bundle for the purpose of this hearing. The claimant was given copies of the bundles for use during the hearing, having refused to take them this morning, and was given time to review them.

4. In relation to the second issue, the Tribunal noted that it had already been provided with a bundle running to well over 1,000 pages for a two day costs application. The respondent contends that all relevant documents have been included in full. Taking into account the overriding objective, we do not consider it proportionate or an efficient use of resources to delay the hearing

any further. If there are still documents the claimant says is missing, he ought to have provided them having been told by the respondent it was open to him to do so. He has brought his own documents today and could have brought additional documents for the Tribunal rather than putting all the onus on the respondent to understand what is alleged be missing and to provide it. While it is important for the parties to be on an equal footing, the claimant would have the opportunity during the course of his submissions to relay to us what he says occurred procedurally in response to any specific points raised by the respondent. The primary question for us was not whether the respondent had acted unreasonably, but whether the claimant's own conduct had been unreasonable or vexatious. Given how long ago the hearing was listed and the waste of judicial resources and costs which any further delay would entail, we did not consider it was proportionate or in the interests of justice to undergo an exercise of finding additional documents at this late stage.

The law

5. Rule 76(1) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides:

   "A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that-
   (a) a party… has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted,
   (b) Any claim or response had no reasonable prospect of success…"

6. In respect of unreasonable pursuit of the proceedings, Rule 39(5) provides:

   "If the Tribunal at any stage following the making of a deposit order decides the specific allegation or argument against the paying party for substantially the reasons given in the deposit order-
   (a) The paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 76, unless the contrary is shown; and
   (b) The deposit shall be paid to the other party … otherwise the deposit shall be refunded.

7. Rule 78 provides:

   "(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 parent 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;…"

8. Rule 84 provides:

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 … ability to pay.

9. The Presidential Guidance on Case Management notes that each case will turn on its own facts. It could be unreasonable where a party has based the claim on something which is untrue. That is not the same as something they have simply failed to prove. Nor does it mean something they reasonably misunderstood.

10. Whether conduct is unreasonable is a matter for the tribunal. Unreasonableness has its ordinary meaning and should not be taken by tribunals to be the equivalent of vexatious (**Dyer v Secretary of State for Employment** UKEAT/183/83). The test is an objective one and the threshold may be crossed simply because the claims had no reasonable prospect of success, even if the claimant did not realise it at the time (**Radia v Jeffries International Ltd** [2020] IRLR 431). The status of the claimant should be taken into account (**AQ Ltd v Holden** [2012] IRLR 648.

11. Costs are compensatory, not punitive. Where costs are because a party has behaved unreasonably, costs should be no more than is proportionate to the loss caused to the receiving party by the unreasonable conduct (**Ludwick v Southwark LBC** [2004] EWCA Civ 306). The Tribunal should take into account the nature, gravity and effect of the paying party's unreasonable conduct in deciding whether to make an order for costs (**McPherson v BNP Paribas** [2004] EWCA Civ 569). The Tribunal does not have to find a precise causal link between any relevant conduct and the costs claimed. Causation remains a relevant factor, however the tribunal should not lose sight of the totality of the relevant circumstances (**Barnsley Metropolitan Borough Council v Yerrakalva** [2012] IRLR 78).

12. In relation to offers of settlement, the failure to beat an offer does not inevitably mean that there has been unreasonable conduct. However, it is a factor which the Tribunal may take into account. Where a party has obstinately pressed for some unreasonably high award despite its excess being pointed out and despite a warning that costs might be asked for against that party if it persisted, the Tribunal could in appropriate circumstances take the view that the party had conducted proceedings unreasonably (**Kopel v Safeway Stores Plc** [2003] IRLR 753).

13. In determining whether to take into account the paying party's ability to pay, there is no absolute rule that the Tribunal should take into account ability to pay but it will be desirable in many cases to do so. An example of when it may be appropriate not to take ability to pay into account would be where a party has not attended the costs hearing or has given unsatisfactory evidence about means (**Jilley v Birmingham & Solihull Mental Health Trust** UKEAT/0584/06). Where evidence on means is unclear or unreliable that may also be a reason for not taking it into account (**Shields Automotive Ltd v Greig** UKEATS/0024/10).

14. If a detailed assessment is ordered, this can be on a standard or indemnity basis. The Tribunal must properly consider the effect of the order on the paying party's ability to pay, and indemnity costs should be rare (**Harman v Queen Elizabeth Hospital Kings Lynn** [2013] All ER (D) 262. The Tribunal

may determine that the paying party should pay a specified percentage of the costs to be assessed or the costs related to a particular issue in the proceedings (**Kuwait Oil Co v Al Tarkait** [2021] ICR 718), but bearing in mind that issue based costs may be difficult to assess (**FDA v Bhardwig** [2022] EAT 97). It may also place a cap on the amount of costs which may be awarded (**Jilley**).

15. The Civil Procedure Rules 1998 provides in respects of the factors to be taken into account when determine costs on a standard or indemnity basis:

"(1) The court will have regard to all the circumstances in deciding whether costs were—
(a) if it is assessing costs on the standard basis—
(i) proportionately and reasonably incurred; or
(ii) proportionate and reasonable in amount, or
(b) if it is assessing costs on the indemnity basis—
(i) unreasonably incurred; or
(ii) unreasonable in amount."

16. There is therefore a three stage test:

(i) The Tribunal must first consider whether the threshold of no prospects of success and/or disruptive or unreasonable conduct has been met (those being the matters relied on the by respondent at this hearing), and in respect of which parts of the claim;

(ii) If so, then the Tribunal will consider whether to exercise its discretion to make a costs order, and may at this stage take into account the ability of the claimant to pay;

(iii) If it is decided to make a costs order, the Tribunal will go on to consider whether it is appropriate to summarily assess the costs in a sum up to £20,000 or to order a detailed assessment. At this stage the Tribunal may take into account the ability of the claimant to pay, and may also consider whether the costs order should specify a percentage of the overall costs to be paid, or to place a cap on the overall level of costs which may be awarded at a detailed assessment. It may also specify whether costs should be assessed on a standard or indemnity basis.

Submissions

17. The respondent started its submissions by saying that the respondent did not want to be in this position but had no choice but to pursue the costs application and did not necessarily even want the claimant's money. It could see no other way to restrain the claimant's behaviour. Although the written application referred to vexatious and abusive conduct, that was not in fact pursued, however it was contended that there were no reasonable prospects of success and the claimant had acted disruptively or otherwise unreasonably.

18. The respondent's written and oral submissions fairly reflected the legal tests to be applied. Detailed submissions were made in relation to each head of claim as regards the prospects of success and we were referred to the relevant parts of the liability judgment. We were also taken in detail

through the chronology of the proceedings and the warnings given and alleged unreasonable conduct was flagged at each stage.

19. The respondent contended that the claimant's financial means should not be taken into account, having breached the Tribunal's orders and been told what the consequences should be.

20. The respondent sought a detailed assessment for all of its costs, on an indemnity basis. It was noted that the cost schedule did include some elements in relation to equal pay which needed to be removed.

21. The claimant asked for a summary assessment of costs. He also went through the chronology. He says he was asked to provide information which he provided, then the respondent sought more, which he again provided. He was not incurring the costs. He says he was only doing what was asked of him, and it was unclear sometimes what was being asked of him. He contended that it was the respondent who was responsible for a delay in mediation occurring. Having brought the claim, he was faced with a position where if he streamlined the claim he was threatened with costs, and if he pursued the claim he was threatened with costs. He was scared. He was critical of the liability judgment, however he was informed we would not be revisiting the judgment. He strongly objected to being called dishonest by the respondent. When he got the deposit order, he felt strongly about those claims he selected to pursue. He was trying to get his claim heard. He did not understand the bench mark for the deposit order. His understanding was that after the strike out application, everything that was left was ok. He emphasised that he was a litigant in person, he did not understand elements of the process. He found process very distressing. He had low self-esteem and felt worthless. He sought support from friends and family. He tried to reach a conclusion.

No reasonable prospects of success

22. We have considered the submissions made by the respondent in respect of each type of claim which was considered at the liability hearing, all of which were comprehensively dismissed. We bear in mind that at this stage there is an objective test, such that threshold may be met even if the claimant genuinely believed that he had a reasonable case. We are are satisfied in respect of each category as set out in Ms Barsam's submissions that the claims objectively had no reasonable prospects of success. This threshold is therefore met.

Unreasonable pursuit of the claims

23. It is a different question whether, as a result of the lack of prospects of succeeding in the claims, it was unreasonable for the claimant to pursue them. Bearing in mind the claimant was a litigant in person, we did not consider it was unreasonable to pursue the claims at the outset, given the claimant's limited understanding of the law at that point. We reject the respondent's submission that the judgment on liability infers that the claimant must have been dishonest in his evidence and therefore must have known that his claims lacked any prospects of success. The Tribunal was not invited to find that the claimant was dishonest and if the Tribunal had considered that the claimant had been dishonest it would have said so in clear terms.

24. It is helpful to look at the chronology of events after that point. The first preliminary hearing in this matter was on 8 February 2021. That appears to have been a brief hearing which was relisted for 10 March 2021 before Employment Judge Adkin. It is not clear from the case management order how much was discussed at that second hearing in respect of the legal tests which would be applied. However, we note that Employment Judge Adkin observed in his order:

    "I have explained to the Claimant that it is his right to bring claims under a very large number of the Tribunal's jurisdictions. I have also mentioned that this is likely to result in a large amount of Tribunal time and that the Respondent might seek to pursue him for legal costs if a large amount of time is taken up dealing with claims that are found to have no reasonable prospect of success or are unreasonably pursued, and in particular pursued after a deposit order is made…"

25. By letter dated 23 April 2021 the respondent offered to pay £2,000 plus VAT towards the claimant obtaining legal advice in respect of legal advice.

26. There was then a further preliminary hearing on 19 and 20 July 2021. At that hearing an individual respondent was added to the claim and an application for five further respondents to be added was refused. Two days were spent considering the list of issues, which was appended to the order and sets out clearly the legal tests which would be applied by the Tribunal in respect of each head of claim. We can infer from this exercise that at this point the claimant had been told what the law was. Again there was a specific mention of costs in the case management order of Employment Judge Adkin:

    "The Respondents have, not unexpectedly, put down a marker that they will apply for their legal costs in relation to claims which are misconceived or have no reasonable prospect of success."

27. A judicial mediation took place on 10 September 2021. The claimant noted that the mediation was delayed, and blamed the respondent for this. We accept what is said by the respondent, that the reason for the delay was that the claimant sought to add additional respondents, and it was necessary to resolve that before the respondents entered mediation. At mediation the respondent made an offer of £45,000 to settle the proceedings. The claimant's offer to the respondent was to settle in the sum of £5 million.

28. On 16 November 2021 offer £45,000 and no application for costs. At the same time a cost warning was given in respect of unreasonable conduct (dealt with below).

29. There was then a four day hearing from 13 to 18 January 2022. At that hearing the claimant was permitted to amend the List of Issues. The disability discrimination claims were dismissed. Two claims in respect of unauthorised deductions from wages and part of the equal pay claim were struck out and deposit orders were made in respect of 34 allegations, 12 of which were in respect of equal pay which we are not concerned with today, and 22 in respect of the matters which are now the subject of the costs application. Deposits were paid in respect of 8 of those 22 items. The claimant also withdrew some claims.

30. In his reasons for making the deposit orders, Employment Judge Adkin set out clearly that in paying the deposit he was running the risk of a future adverse costs order.

31. On 19 April 2022 Employment Judge Adkin heard a costs application in respect of the respondent's costs to 18 January 2022 said to arise from unreasonable conduct and pursuit of unmeritorious claims. In his judgment dated 7 June 2022 Employment Judge Adkin did find some unreasonable conduct, and ultimately made a costs award of £2,500. It is notable that this judgment sets out the law in relation to costs comprehensively, such that the claimant could have been in no doubt the type of application which might be made in the future should his claims fail.

32. Just prior to that hearing on 30 March 2022 the respondent offered to withdraw its costs application on the basis of the claimant withdrawing his claims.

33. On 7 December 2022 the respondent wrote to the claimant having reviewed his witness statement. Although it is stated in the letter his claims were considered to be completely unmeritorious an offer was made to settle the matter in the sum of £80,000.

34. The final hearing took place over 15 days in January and February 2023, and as we have already discussed that resulted in the dismissal of all claims, save for the equal pay issues which are due to be the subject of a 5 day hearing in January 2024. It is noted that the claimant withdrew a number of his claims during the course of that hearing. Of particular note is that the claimant withdrew harassment claims in respect of two individuals who were due to give evidence, but maintained a similar claim in respect of a witness who could not give evidence.

35. The Tribunal was referred in written submissions to five offers made by the respondent and one offer made by the claimant after the liability hearing which, on brief review, relate to the equal pay claims, save for an offer of £1,500 part of which was to take legal advice on the costs application. We were told orally at the hearing about a further offer made by the claimant last week. We infer that also related to settlement of the whole proceedings and settlement of the costs application. Save for the offer of costs in respect of legal advice for the costs application, it is not appropriate for these offers to have been put before the Tribunal today and they are disregarded and were not discussed or taken into account in any way.

36. We have considered this chronology in some detail in reaching our conclusions as to whether the claims were unreasonably pursued.

37. We find that it was not unreasonable to continue in March 2021. Although the claimant was warned about breadth of claims, the List of Issues was still being finalised at that point. The offer of legal costs in April 2021 was in respect of the completion of the List of Issues and did not relate to withdrawal of the claims. It is noted this was considered by Employment Judge Adkin in the costs judgment dated 7 June 2022 and it was found not have been unreasonable for the claimant not to take up this opportunity.

38. We are narrowly persuaded that it was not unreasonable to continue with the claims after the preliminary hearing in July 2021, particularly bearing in mind the upcoming Judicial Mediation.

39. However we find that in September 2021 at the Judicial Mediation the claimant took a wholly unreasonable approach to mediation and settlement. The threshold is therefore met at that point, however for completeness and in order properly to exercise our discretion whether to award costs, we have considered the rest of the chronology.

40. There is further unreasonable conduct in respect of those matters for which deposit orders made and paid in January 2021, in accordance with rule 39(5). The claimant has said nothing to persuade us that it was not unreasonable for him to continue to pursue those claims. He was warned in respect of taking a scatter gun approach and told explicitly the impact on costs of the deposit order.

41. We do not consider the offer of withdrawal in exchange for withdrawal of the costs application in March 2022 takes the matter much further given the low level of costs which were in fact then awarded.

42. The claimant had a further opportunity to settle the claims in December 2022 in advance of the final hearing when the offer was made in the sum of £80,000. This offer does not take the matter further as it is is equivocal as to what would happen to costs already incurred and as to whether there would be an application in respect of them. That was the last offer made before the hearing commenced in January 2023.

43. In summary, from the point of Judicial Mediation in September 2021 it was unreasonable for the claimant to continue to pursue the claims. The remaining chronology does not alter that in any way, save to note that he subsequently chose to pay deposits in respect of claims which he had been told had little reasonable prospects of success.

Other unreasonable and/or disruptive conduct

Requiring documents to be sent in hard copy and via special delivery

44. This issue was dealt with comprehensively in Employment Judge Adkin’s judgment of 7 June 2022 at paragraphs 92 to 106. It was found that there was unreasonable conduct in respect of deliberately refusing to accept delivery of documents or to pick up documents if he could not answer the door. It was however found that there was no unreasonable conduct in respect of the claimant’s refusal to accept documents electronically. We note that while the claimant plainly has access to a computer that does not necessarily mean that he has internet access or email to accept documents electronically other than on a memory stick. We have not been given examples of conduct in this regard which we consider unreasonable after April 2022 and therefore this matter has already been considered and dealt with by EJ Adkin.

Adopting a scatter-gun approach in claims

45. The claimant's approach to the claims and whether he believed they had merit has already been considered above in respect of the prospects of success and whether it was reasonable to pursue them.

Failure to engage in settlement and inflating the value of the claims

46. The claimant's approach to settlement and his unrealistic views as to the value of his claims has already been considered above.

47. We have considered in full the points made in the respondent's letter of 28 April 2023 and do not consider there is any further unreasonable conduct not already set out above. We note in particular the suggestion made in the respondent's written submissions that the claimant had been found to be dishonest by the Tribunal in a number of significant respects. We have reviewed the previous findings and cannot find reference to the claimant being found to be dishonest.

Whether the Tribunal should take into account the claimant's ability to pay

48. When deposit orders were considered the claimant failed to provide evidence of financial means, however Employment Judge Adkin accepted that at that time he was not working or in receipt of benefits. He had an adult child in his 20s who was in an apprenticeship scheme and had equity in a property.

49. In the costs judgment of 7 June 2022 Employment Judge Adkin noted that the property had equity in the region of £240,000 to £300,000 and that the claimant was not in employment. It was noted that the property was not a liquid asset. On the other hand the claimant was able to find a substantial sum to pay part of the deposit order.

50. Following the respondent's costs application in April 2023 a case management hearing was held on 8 June 2023 before Employment Judge Stout. She ordered that the claimant must provide a witness statement detailing his financial means, i.e. including at least details of income (including from employment or benefits or any other source), savings, and any substantial property owned (i.e. house or flat or car or similar) and regular monthly expenditure together with documentary evidence by 29 September 2023.

51. The claimant provided written submissions dated 28 September 2023 in which he said he had no income and relied on others to get by, however he did not comply with the order to provide detailed financial information. The respondent applied for an unless order on 3 October 2023. Employment Judge Stout considered that application and refused it. However, she specifically noted:

    "As the Claimant has failed to comply with the order, the Tribunal will not be able to take his means into account under Rule 84 with the result being that any costs Oder made against him is likely to be much higher than it would have been if he had complied with the order and provided evidence as to his means. That was explained to the Claimant by me previously, so I infer that his decision not to comply with that order took into account that likely consequence."

52. The claimant did not provide anything in relation to his means in advance of the hearing. He was invited by the Tribunal to present anything he wished the

Tribunal to consider by the second morning of the hearing. He produced two pages without an accompanying witness statement, showing a bank balance of £2,393.10 as at September 2023 and £2,222.51 as at 30 October 2023. He further provided a letter showing that a refund of insurance premiums totalling £1,078.22 was being paid into that account in August 2023, which is shown in the detail of transactions we have been provided with.

53. The claimant was asked if he wanted to give evidence about his means and he declined, simply saying he did not have £1.2m to pay. He later mentioned in his submissions he has no income and is being supported by friends and family.

54. The respondent noted that his bank account has remained at around the same level and we have no explanation where his income is coming from.

55. We conclude that the claimant has had every opportunity to provide detailed evidence of his means and has been made aware of the consequences of not doing so. Although he provided some information at the hearing he declined to be cross examined on it and what he provided was extremely limited. We take into account the guidance given in **Jilly** and **Greig** and find that the claimant has given unsatisfactory and unclear evidence as to his means. In the circumstances we have decided we should not exercise our discretion to take the claimant's means into account in deciding whether to award costs and if so in what amount.

Whether the Tribunal should exercise its discretion to award costs

56. Having found that the claims had no reasonable prospects of success and that after September 2021 they were unreasonably pursued, and having determined that the claimant's means should not be taken into account at this stage, we consider it is in the interests of justice that in this case consequences should follow from the claimant's unreasonable pursuit of unmeritorious claims. In the circumstances we exercise our discretion to award costs.

57. However we are not satisfied that the respondent should have all of its costs.

58. A costs application has already been made in respect of costs up to and including 18 January 2022 which was the subject of Employment Judge Adkin's judgment dated 7 June 2022. In that application the respondent chose to limit the costs claimed to £20,000 in respect of unreasonable conduct and the pursuit of claims with no reasonable prospects of success, and £2,500 was ordered to be paid. The respondent in that application did seek to reserve the right to pursue all the costs in Part One of the costs schedule for the period up to 18 January 2022 and all costs from 19 January 2022 if the claims were later found to be unmeritorious. Part One appears to relate to the preliminary consideration of the claims and early hearings, prior to the Judicial Mediation in September 2021, which is the point at which we consider it was unreasonable to pursue the claims. Although we have found that the claims had no reasonable prospect of success at the outset, given the claimant's status as a litigant in person we do not consider it is fair to award costs in respect of the period where pursuit of the claims, even though they were unmeritorious, was not unreasonable. The respondent now also seems to be seeking the same costs as originally included in Parts 2 to 5 of the application

considered by Employment Judge Adkin. It was confirmed that the whole costs were sought and the £2,500 was to be deducted. We find that if we were to award such costs it would amount effectively to a 'second bit of the cherry', going far beyond what the respondent said it was reserving in its first costs application and allowing it to go behind the choice made earlier in proceedings to limit Parts 2 to 5 to £20,000 and Employment Judge Adkin's careful assessment of those costs.

Basis of assessment of costs

59. The costs from 19 January 2022 significantly exceed the £20,000 cap for summary assessment. We do not consider it would be a fair reflection of the costs wasted by the claimant's unreasonable conduct to limit the costs to this level of award. In the circumstances we find that there should be a detailed assessment by an Employment Judge.

60. We have considered whether costs ought to be on an indemnity or standard basis. We are significantly concerned about the proportionality of the costs incurred in this case, which exceed £1m. We are unable to say what the impact would be on the claimant's ability to pay of ordering costs on an indemnity basis, and we are mindful that indemnity costs should be rare. In the circumstances we order that costs should be assessed on a standard basis.

61. We have further considered whether to impose a cap or a percentage on the level of costs which may be awarded. We have already imposed a chronological limit on costs in that only costs incurred after 18 January 2022 may be considered. We also make it clear that no costs in relation to the equal pay issues which have yet to be determined should be included in the respondent's costs schedule.

62. We do not feel we are in a position to impose a cap on costs, because we have not taken into account the claimant's means and do not know clearly what he may be able to afford to pay.

63. However, we are minded to apply a percentage to the costs which may be awarded. We bear in mind that on the one hand, significant costs have been incurred by the respondent as a result of the claimant's conduct. On the other hand, costs are not intended to be punitive and ought to be exceptional, and we are concerned about the proportionality of the costs incurred. The claimant is a litigant in person who has not had legal advice (and has been found not to have been unreasonable in not getting such advice), and has in our view had a strong emotional reaction to the proceedings which may have impacted on his ability to appreciate the various warnings given to him. In particular we take into account his written submission that in his view he felt threatened by cost warning letters (though we are not finding that the content of any of the letters was in fact inappropriate) and has been struggling and has had vulnerabilities to his mental health. Although we have not had formal medical evidence we accept the claimant's submissions in this regard. We have considered these competing factors carefully. In our view the appropriate percentage to be applied to the assessed costs is 20%.

64. In summary, we award costs in respect of all issues except for equal pay which is yet to be determined. Costs are limited to the period from 19 January 2022,

and the claimant is ordered to pay 20% of such costs as are assessed to have been incurred during that period on a standard basis.

65. We further order that the deposits of £800 paid in respect of the non-equal pay issues shall be paid to the respondent and deducted from the sums ordered to be paid.

66. For the avoidance of doubt this judgment does not impact on the previous costs order for £2,500 which it is understood remains outstanding.

Employment Judge Keogh

____

Date 22 December 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON

22/12/2023

FOR THE TRIBUNAL OFFICE