EMPLOYMENT TRIBUNALS

Claimant: Mr S Morgan

Respondent: DHL Services Limited

Heard at: Birmingham (by CVP) **On:** 27 March 2024

Before: Employment Judge Edmonds
Mrs E Shenton
Mr P Wilkinson

Representation
Claimant: In person
Respondent: Ms B Davies, counsel

JUDGMENT having been sent to the parties on 5 April 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS - COSTS JUDGMENT

Introduction

1. This is the unanimous decision of the Employment Tribunal.

2. This hearing was to deal with a costs application from the respondent dated 7 December 2023, following a final hearing from 16 to 19 October 2023 inclusive, at which the claimant's claim was dismissed in its entirety. The claimant's claim had raised 10 separate factual allegations which were pleaded as being both direct discrimination because of race and harassment related to race. The claimant's claim failed on all ten allegations. The Tribunal provided oral judgment on 19 October 2023, followed by full written reasons dated 9 November 2023 (a copy of which is at page 56 of the main file for this hearing).

3. The respondent did not seek to recover their entire costs of dealing with the claim, but rather their counsel's fees for the final hearing and for this costs hearing. Counsel's fees for the final hearing amounted to a brief fee of £2,000 plus VAT with three refresher fees of £750 per day plus VAT along

with expenses, totalling £5,181.48 plus VAT. There was also an £800 plus VAT fee for drafting written submissions for this hearing and £1,100 plus VAT for attending the costs hearing.

Issues

4. There were two separate grounds for the respondent's costs application:

    a. That the claim had had no reasonable prospects of success; and
    b. That the claimant had acted unreasonably in the way that the proceedings (or part) have been brought and/or conducted.

5. The issues we therefore had to determine were:

    Prospects of success

    a. Did the claim have no reasonable prospects of success?
    b. If so, is it appropriate to make an order that the claimant be required to pay some or all of the respondent's costs?
    c. If so, how much?

    The way the proceedings have been conducted

    a. Did the claimant act vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of proceedings or the way that the proceedings (or part) have been conducted?
    b. If so, is it appropriate to make an order that the claimant be required to pay some or all of the respondent's costs?
    c. If so, how much?

Procedure, Documents and Evidence Heard

6. The respondent's costs application dated 7 December 2023 had requested that the application be considered without a hearing in order to save further costs.

7. The claimant replied to that costs application by email dated 11 December 2023, objecting to the application for costs. The Tribunal wrote to the claimant on 12 December 2023, asking him to comment on the respondent's request for the application to be dealt with without a hearing. He replied on 22 December 2023, although did not address that point, and following a further email from the Tribunal on 12 January 2024, the claimant replied on 22 January 2024 requesting that there be a separate hearing to consider costs. This was on the basis that he felt he would be at a disadvantage if there were not a hearing as he would not understand what was going on and would not be able to express himself in writing. In the circumstances, we decided to list a one day hearing to deal with the respondent's application for costs.

8. The claimant had requested that a separate Tribunal panel be convened to decide the costs application as he felt it would be unfair if the matter were decided by the same panel who had decided his claim against him, and in

respect of which he had an ongoing appeal to the Employment Appeal Tribunal. We considered that, as the application for costs arose specifically out of matters relating to the hearing on 16 to 19 October 2023 it should be dealt with by the same panel who were present at that hearing. We also considered that the fact that he had an ongoing appeal did not prevent the costs hearing from going ahead with that same panel.

9. At the hearing we were provided with a main bundle amounting to 227 pages, along with a supplementary bundle of 812 pages from the claimant. We were also provided with a separate authorities bundle by the respondent amounting to 72 pages. The claimant had also sent separate emails in a four page pdf document containing information about his ability to pay any costs award. We were also provided with counsel's fee note and written submissions from the respondent. We explained to the parties that we would not read every document and that if they wanted the Tribunal to see a particular document, they needed to refer us to it. It is also relevant to note that some of the claimant's submissions related to his disagreement with our findings of fact at the final hearing, and we make clear that we would not be re-deciding the case at this costs hearing.

10. The claimant had been advised by correspondence from the Tribunal dated 30 January 2024 that if he wished to give evidence about his ability to pay any costs award, he should prepare a witness statement by 8 March 2024. He did not prepare a specific witness statement however he had sent a short three paragraph undated letter to the Employment Tribunal regarding his ability to pay any costs award. We agreed to use that as his witness statement. The claimant gave oral evidence and was cross examined briefly by the respondent followed by some questions from the Tribunal to clarify certain points. The respondent did not call any witnesses to give evidence.

11. At the start of the hearing we clarified with the claimant whether he required any adjustments because of his health. He confirmed that he did not and he was informed that if he needed a break at any time he should let the Tribunal know.

Fact Findings

The history of the legal proceedings

12. The claimant's original claim was presented to the Tribunal on 11 April 2018 (page 2 of the main file). The proceedings had a long history before reaching final hearing on 16 to 19 October 2023.

13. On 21 September 2018 the respondent wrote to the claimant (page 91 of the main file), setting out their belief that the claim had no reasonable prospects of succeeding at final hearing. Detailed reasons for this were provided and the claimant was informed that if he continued to pursue his claim the respondent reserved the right to apply for him to be issued with a Deposit Order.

14. The claimant's claim was originally listed for a public preliminary hearing on 11 February 2019 to consider, amongst other things, whether any part of his

claim should be struck out on the ground that it has no reasonable prospect of success. The claimant's claim was then struck out in its entirety at the hearing on 11 February 2019 on the basis that it had no reasonable prospects of success.

15. The claimant appealed that Judgment to the Employment Appeal Tribunal, and his appeal was allowed by HHJ Auerbach on 18 December 2020 and the question of strike out / deposit order was remitted to a different Tribunal. This was on the basis that his case at its highest including that he had been falsely and maliciously accused on misconduct and the Tribunal had not sufficiently examined (of if they had, sufficiently explained) whether such features of his case might support the drawing of an inference or the shifting of the burden of proof. During the appeal hearing, the claimant was legally represented and his representative acknowledged that a complainant who unsuccessfully pursues a case which they know, or ought reasonably to appreciate, from the outset, has no merit, may be at risk of costs.

16. On 30 July 2021, the respondent wrote to the claimant's legal representative at that time (page 87 of the main file), inviting the claimant to withdraw his claim on the basis that (a) it had not been brought within the required time limits and (b) his ongoing pursuit of his claims amounted to unreasonable conduct on the basis that he would not be able to show facts from which a Tribunal could conclude, in the absence of any other explanation, that discrimination had occurred. The claimant was advised that if he did not withdraw his claim, the respondent intended to seek to recover its costs if the claimant ultimately failed in his claims.

17. On 20 August 2021 a further preliminary hearing took place to consider the respondent's application for strike out of the claimant's claims (or, in the alternative, for a deposit order). That application was refused. The respondent applied for reconsideration of the decision not to issue a deposit order, and that reconsideration application was also refused.

18. The final hearing took place from 16 to 19 October 2023. Oral judgment was issued on 19 October 2023 following a four day hearing. In respect of each of the ten allegations, the claimant failed to shift the burden of proof to the respondent and his claim failed. In so far as relevant to the respondent's costs application, we set out those findings and conclusions from the final hearing that we need to refer to in our conclusions below.

The claimant's financial situation

19. The claimant remains employed by the respondent, with a monthly gross basic pay of approximately £2,567 per month. He has recently had a period of sick leave of approximately three months duration, however had returned to work the week before this costs hearing.

20. As he had only just returned to work and because he was on statutory sick pay only prior to that, his March 2024 payslip had been around £607 however from April onwards that would increase back to full pay. Although he is on a phased return to work, he is using holidays as part of the phased return and therefore will be paid in full during that period.

21. The claimant has a number of outstanding debts amounting to approximately £23,000 in total, from two separate matters:

    a. We saw a letter from the Department for Work & Pensions regarding a debt which stood at £16,482.88 on 19 April 2022 (page 130 of the main file). The claimant explained that the amount of that debt had reduced since that date as he was paying it off on a monthly basis – initially at £70 per month, and now at £90 per month.
    b. The claimant has a separate debt of approximately £8,000 in respect of housing payment overpayments. Again he makes monthly repayments towards the discharge of that debt, in the sum of £70 (split between two payments of £50 and £20 in respect of two separate housing payment debts).

    Therefore the claimant is repaying £160 per month towards these debts in total at the time of the hearing.

22. The claimant rents a council house at a cost of £85 per week, which was due to rise to £91 per week from April 2024. He pays this sum himself, has no family to support and no other income. He has no other outstanding debts and no abnormal expenditure: he referred to his expenditure as being cost of living and fuel.

Law

23. Rule 76 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the ET Rules") provides (so far as relevant):

    (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) ….

    These are sometimes referred to as the threshold tests for an award of costs.

24. Rule 78 of the ET Rules addresses the amount of a costs order, as follows (so far as relevant):

    (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) ….
        c) ….
        d) ….

e) ….

25. Section 84 of the ET Rules 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 party party's (or, where a wasted costs order is made, the representative's) ability to pay.

26. Although the threshold tests are the same whether or not a party is legally represented, a litigant in person should not be judged by the standards of a professional representative (**AQ Ltd v Holden [2012] UKEAT/0021/12/CEA**).

27. When considering the question of unreasonable conduct, "unreasonably" should be given its ordinary English meaning and the Tribunal should take into account the nature, gravity and effect of the party's conduct (although not necessarily separated into individual sections) (**Dyer v Secretary of State for Employment [1983] UKEAT 183/83** and **Yerrakalva v Barnsley Metropolitan Borough Council and anor 2012 ICR 420, CA**). A party's conduct as a whole my amount to unreasonable conduct and making unsubstantiated allegations is capable of amounting to unreasonable conduct (**Sahota v Dudley Metropolitan Borough Council EAT 0821/03**).

28. The key question is not whether a party believed their claim had prospects of success, but whether they had reasonable grounds for doing so (**Scott v Inland Revenue Commissioners 2004 ICR 1410, CA**). The Tribunal should assess whether the claim had no reasonable prospect of success based on the information that was known or reasonably available at the time (and not take into account information that only came to light at a later stage). Even if there are disputes of fact, that does not mean that the Tribunal cannot conclude that there were no reasonable prospects of success at the outset (or that the claimant should reasonably have known that), as this will depend on what the claimant knew or ought to have known what the true facts were **(Radia v Jefferies International Ltd EAT 0007/18** and **Vaughan v London Borough of Lewisham and ors 2013 IRLR 713 EAT**).

29. The question of whether a claim had no reasonable prospects of success may overlap with the question of unreasonable conduct (**Opalkova v Acquire Care Ltd [2021] UKEAT/0056/21**). There are three key questions:

    a. Did the complaints have no reasonable prospects of success?
    b. If so, did the claimant know or appreciate that?
    c. If not, ought they reasonably to have known or appreciated that?

    These questions are relevant both to whether there were no reasonable prospects of success and whether there was unreasonable conduct.

30. Where the threshold test under Rule 76 of the ET Rules has been met for an award of costs, it is still necessary for the Tribunal to decide whether it considers an award of costs to be appropriate (**Yerrakalva, above**).

Whether or not a costs warning letter was sent it relevant but not determinative: the weight it should be given will depend on the circumstances of the case (**Vaughan, above).**

31. Costs are intended to be compensatory rather than punitive, and are limited to those reasonably and necessarily incurred by the other party. They are the exception and not the rule. A precise link between the unreasonable conduct and the costs incurred is not required (**D'Silva v NATFHE [2009] UKEAT 0126/09** and **Salinas v Bear Stearns International Holdings Inc and anor 2005 ICR 1117, EAT**). In **Sud v Ealing London Borough Council 2013 ICR D39, CA**, it was held that the process did not entail a detailed or minute assessment, but rather a broad-brush approach taking into account the relevant circumstances.

32. The Tribunal is not required to take into account the means of the paying party but if it does not it should provide reasons for that. When taking into account ability to pay, this should include assets as well as income. A costs award can be made even where a party cannot afford to pay it immediately (**Vaughan, above)**.

Conclusions

33. As explained in the issues section above, there is essentially a three stage test:
    a. Have the threshold criteria in Rule 76 of the ET Rules been made out?
    b. If so, is it appropriate to make an order for costs at our discretion?
    c. If so, how much?

    We address the question of whether there were no reasonable prospects of success first, followed by the question of whether the claimant acted unreasonably in bringing the proceedings or the way that the proceedings had been conducted.

No reasonable prospect of success

34. We consider that the claimant did and does genuinely believe that his claim had reasonable prospects. That is not however determinative. We must not judge the matter with hindsight but rather consider what the claimant knew, or ought reasonably to have known, at the outset of his case or just prior to final hearing given the respondent only seeks costs of the final hearing and costs application.

35. His appeal to the Employment Appeal Tribunal after his claim was struck out for having no reasonable prospects was successful. Equally, his claim was not struck out and no deposit order issued at a later preliminary hearing, and the decision not to make a deposit order was confirmed on reconsideration. This was on the basis that there were factual disputes that needed to be resolved at hearing.

36. The fact that a party has had an application for strike out and/or a deposit order refused is relevant but not determinative. It does not automatically

mean that he did have some reasonable prospects of success. What it means in this case is that there were disputed facts and, taking his case at its highest, it could not be said he had no or little reasonable prospects of success. The Employment Appeal Tribunal and the Judge at the preliminary hearing in 2021 did not have the benefit of hearing the evidence and understanding the detail of the evidence in relation to those factual disputes.

37. Of course, the claimant would have had the knowledge of the evidence that he intended to rely on, and therefore the fact that he did not have any evidence, direct or by inference, to support his assertions that the treatment he received was because of or related to his race. Whilst the Employment Appeal Tribunal and the Tribunal at preliminary hearing had to take the claimant's case at its highest, the claimant would have had additional information i.e. that he did not have evidence to link the treatment in any way to his race. Therefore, the fact that the Employment Appeal Tribunal and the Tribunal at preliminary hearing in 2021 did not say no reasonable prospects of success, does not mean that there were prospects of success.

38. We consider that the claim had no reasonable prospects of success, as there was nothing which could have shifted the burden of proof. With the knowledge the claimant would have had, he should reasonably have known that. Therefore, the threshold under Rule 76 in relation to there being no reasonable prospect of success has been met.

Did the claimant act unreasonably in either the bringing of the proceedings or the way in which the proceedings were conducted

39. The respondent's representative confirmed during the hearing that they were not seeking to argue that the claimant had acted vexatiously, abusively or disruptively, and were only relying on an allegation that he had acted unreasonably.

40. Unreasonable conduct has its ordinary meaning. We need to identify the conduct, what was unreasonable about it and what effects it had, and there is no need to separate and compartmentalise it under separate headings.

Continuing to pursue the claim

41. There are two separate issues here: firstly, the alleged unreasonable conduct of pursuing a claim with no reasonable prospects of success. Although we have concluded that there were no reasonable prospects of success, it is not automatic to say that there must be unreasonable conduct to pursue that claim.

42. The claimant had received two letters from the respondent's representative explaining why they considered that he had no reasonable prospects of success. However he had a lack of trust in the respondent and would not necessarily take at face value what their lawyers were telling him.

43. Having said that, he did at certain points have his own legal representation and it would be reasonable for him to have considered prospects with them.

We do not know what information he gave those representatives about the facts of his case or what advice they gave.

44. After his claim was struck out, he appealed to the Employment Appeal Tribunal and his claim was reinstated, and then at a further preliminary hearing an Employment Judge declined to strike it out or order a deposit. Whilst that did not mean that he had reasonable prospects of success or any prospects of success, was it unreasonable for him to interpret that as meaning that his case had some prospects?

45. From hearing from the claimant both at the final hearing and today, we consider that the claimant does not understand the distinction between a finding that evidence needs to be heard, and a finding that a claim has some prospects of success. The claimant should have known that he did not have the evidence to back up his case so as to shift the burden of proof. The claimant had experience of Tribunal proceedings and therefore would have had some knowledge of the burden of proof and what was required of him. However, we conclude that the Employment Appeal Tribunal decision and the refusal to strike out his case at the later preliminary hearing was misinterpreted by him so as to give him a false impression that his claim had prospects of success.

46. We conclude that there was not unreasonable conduct on his part due to his misinterpretation of what was happening.

The way in which proceedings were conducted

47. The second aspect here is whether there was unreasonable conduct in the way in which the proceedings were conducted. Here, the respondent relies on a number of matters:

    a. That the claimant admitted the parking infringement and then denied it. In our written reasons following the final hearing in October, we found that in the internal investigation (at paragraph 28) that the claimant "*said that he knew he was not supposed to park there, but everyone did it so he followed suit and that he had not seen signs saying not to*". Therefore he did admit the infringement but suggested that everyone acted the same at the time of the internal investigation. Our findings do not address the assertion that he denied the infringement at the final hearing and the respondent's representative noted that in her submissions. Although today he did say in his submissions that he had not committed the parking infringement, given the lack of specific finding on this point, we do not consider we have sufficient information today to make a finding of unreasonable conduct.

    b. The assertion by the claimant that the respondent's statement in relation to the security gate incident on 5 April 2017 was fictitious. At this costs hearing the claimant continues to assert that the person whose statement it was does not exist and has also said at this hearing that he checked the matter with Jaguar Land Rover security at the time and they did not have a security guard by that name. At the final hearing he did not say that he had specifically contacted Jaguar

Land Rover about the matter and been told that the security guard did not exist. He also did not present any documentary evidence to show that they did not exist or his investigations into that matter. Our finding that there was no basis for the claimant's accusation that it was fake was based on the evidence before us at the final hearing. We conclude that there is insufficient evidence before us to say that his conduct in pursuing that allegation was unreasonable given that he now says he had evidence that he did not present to the Tribunal at the hearing.

c. The next issue relates to the claimant saying that the investigation meeting invitation letter of 12 April 2017 did not apply to him. The respondent says this is dishonest as well as baseless. We found at the final hearing that the letter was very clear that it was the incident on 3 January being referenced within it, and we did not accept that the claimant genuinely thought that the respondent had referred to the wrong investigation. The claimant had continued to assert that he thought the respondent had got the wrong investigation at final hearing. We do not consider he could have genuinely thought that. We found his behaviour inappropriate in our written reasons and we consider it to have been unreasonable conduct for the claimant to assert that he did not understand this letter to have been relating to the investigation into him, when it very clearly did.

d. The next issue is the claimant asserting that the disciplinary meeting notes regarding the meeting on 26 April 2017 were fabricated. He put forward no credible explanation at the final hearing as to why he thought that to be the case and in fact one of his allegations within the list of issues was that this meeting took place on that date in his absence. This is a serious allegation to make against the respondent, accusing them of fabricating documents in a disciplinary process. It was made without any basis. This amounted to unreasonable conduct in the way that the proceedings were conducted.

e. In relation to the accusation that the meeting on 19 May 2017 did not take place, the same applies as for the meeting on 26 April 2017. This also amounted to unreasonable conduct in the way that the proceedings were conducted.

f. Turning next to our conclusion at final hearing that each time the claimant gave an account of the incident on 5 April 2017, he exaggerated matters to detract from the allegations. This comment within our findings came in relation to the claimant having on 26 September 2017 accused the security officer of physical assault. That is a serious accusation to make against someone and our finding was that he did so to detract from the allegations against himself. The bringing or continuing of proceedings in relation to the incident on 5 April 2017 in circumstances where he was exaggerating the position was unreasonable.

g. The next issue relates to an allegation the claimant made that a fabricated document had been added to the bundle regarding a

meeting on 10 October 2017. At the final hearing he initially said that the document was fabricated, then was presented with evidence electronically and in hard copy showing it had been sent, although he backtracked from asserting fabrication he continued to say that he had not sent it. In his submissions today, the claimant said that the file contained documents from 6 years ago that he did not remember, he said "*that's why I said don't remember it. It was false. I said it was false because I just didn't remember it, it was so long ago*". This aligns with our finding in our written reasons that the claimant jumped to the conclusion that evidence was fabricated. He appears to say that because he does not remember something, he therefore accuses the respondent of fabrication and that this in some way justified. That is unreasonable conduct, to pursue a point at hearing by accusing a respondent of fabricating documents, a serious allegation, purely because you do not remember it. In addition, the claimant accused the respondent of sneaking it into the bundle, when there was no evidence to support it that assertion – again a serious allegation against the respondent's representative. Both of those are unreasonable conduct in the way in which the proceedings were conducted.

h. In relation to the accusation that the grievance minutes had been fabricated, the claimant relied on the fact he said that a comment about the union representative within those minutes was incorrect. Although our finding was that the notes were accurate, on this occasion the claimant had at least given a basis for his assertion that the notes were fabricated (i.e. that he felt it recorded incorrect information about his union representative's reasons for not being there). It is finely balanced, but on this occasion we find no unreasonable conduct in the way he conducted proceedings on this point.

Is it appropriate to make an award of costs?

48. Therefore, we have concluded that:
    a. The claim had no reasonable prospects of success; and
    b. The way that the proceedings were conducted was unreasonable in certain respects (as set out in paragraphs 46 (a) to (h) above).

49. Addressing first the fact that the claim had no reasonable prospects of success, we accept that the respondent has reasonably and necessarily incurred legal costs in defending this claim. We also acknowledge that costs are the exception not the rule.

50. On the one hand, the claimant was sent two letters by the respondent's representative setting out the weaknesses of his case. He had in his possession the knowledge that he did not have evidence to support the allegations he was asserting or anything to link the conduct directly or indirectly to his race, whether by inference or otherwise.

51. On the other hand, the Employment Appeal Tribunal overturned the original striking out of his claim and a subsequent Employment Judge declined to strike it out or issue a deposit order. We have found that the claimant

misinterpreted those decisions as meaning that his claim did have prospects of success.

52. In those circumstances, we do not consider it appropriate to exercise our discretion to award costs against the claimant on the basis that his claim had no reasonable prospects of success or on the basis that the bringing or conducting of proceedings was unreasonable because he ought to have known that he had no reasonable prospects of success. Although he ought to have known that, we conclude that he genuinely did not because he misinterpreted the decisions of the Employment Appeal Tribunal and the Judge at the subsequent preliminary hearing.

53. Turning next to the unreasonable way in which the proceedings were conducted: specifically we have found unreasonable conduct in:
    a. Saying the letter regarding investigation interview on 12 April 2017 did not apply to him;
    b. Alleging that the meeting notes dated 26 April 2017 and 19 May 2017 were fabricated;
    c. Exaggerating matters in relation to the April 2017 incident;
    d. In relation to the document in the bundle dated 10 October 2017, saying first of all that it was fabricated, then on seeing evidence of it, that he had not sent it, and then accusing the respondent's representative of sneaking it into the bundle - none of which we found to be the case.

54. Accusing a respondent of fabricating documents is a serious matter - both for the respondent as a whole and for the individuals who the accusation was made to. Exaggerating matters and alleging physical assault is also a serious matter. Also in relation to the respondent's representative, accusing them of professional impropriety in a regulated profession is a serious matter.

55. There was no basis for the claimant's assertions, and he appears to work on the basis that if he does not remember something, his first port of call is to suggest it was fabricated. This is very unreasonable conduct.

56. The purpose of a costs award is compensatory not punitive. If these matters had not happened, the hearing would still have taken place, however the respondent would not have had to prepare to deal with those issues as part of that hearing.

57. In these circumstances, we consider that it is appropriate to make a costs order against the claimant.

The amount of the costs order

58. Although there is no requirement to identify with any particularity a causal link between the unreasonable conduct and the amount of costs ordered, we take into account that there would have been a final hearing in any event, albeit certain of the issues that had to be addressed would not have had to be addressed in such detail, and the witnesses / individuals in question would not have had to deal with being accused of fabricating

documentation.

59. We take into account the claimant's financial means. He has a regular income, now that he has returned from sick leave. He has an underlying health condition which we acknowledge may mean further sick leave in future, this is not known. He rents a property although his rental outgoings are under £500 per month and he has no family to support. However, he has considerable debts of over £20,000 in total and currently has three payment plans in place, one with DWP, and two in relation to housing payment overpayment. These total £160 per month (£90 DWP and £70 housing). He will be repaying those debts for some years to come. He is likely to be well into retirement age by the time the debts are paid off.

60. In these circumstances, whilst we consider costs to be appropriate, we consider that it should reflect both the fact that the final hearing would have to take place in any event and the fact that the claimant, whilst in employment, does have limited means. We also do not make any specific award in relation to the costs of this costs hearing itself as we consider that the claimant had reasonable grounds for requesting a hearing rather than it being dealt with on the papers.

61. Taking everything into account, we consider that it is appropriate to order costs in the sum of one refresher day (not including VAT) i.e. £750. This reflects the fact that the hearing could potentially have been shorter had it not been for the unreasonable conduct, and takes into account the claimant's limited means.

62. Therefore we make a costs order in the sum of £750.

Employment Judge Edmonds

Date: 17 May 2024