**Case Numbers: 2501166/2021**

**2501167/2021**

# EMPLOYMENT TRIBUNALS

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| **Claimants:** | 1. Dr A Aftab<br>2. Prof R Scarpa |
| **Respondents:** | 1. Durham University<br>2. Prof N Anbarci<br>3. Prof S Hart |

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| **Heard at:** | Newcastle Employment Tribunal |
| **On:** | 5 January and 25 March 2024 |
| **Before:** | Employment Judge Jeram |

**Representation**

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| Dr Aftab: | Mr D Flood of Counsel |
| Prof Scarpa: | In person |
| Respondents: | Ms C Millns of Counsel |

# RESERVED JUDGMENT

1. Dr Aftab shall pay the respondents £14,786.55 by way of costs.
2. Prof. Scarpa shall pay the respondents £ £14,786.55 by way of costs.

# REASONS

## The Application

1. On 12 May 2023, the respondents made an application for costs against the claimants. It was made pursuant to rule 76(1)(a), in that they alleged that the claimants had in the conduct of the proceedings acted unreasonably and also pursuant to rule 76(1)(c) on the ground that the claimant's application for an adjournment was made on the day of the hearing, being 12 April 2023.

## Legal Principles

2. Rule 76 of the Employment Tribunal Rules of Procedure 2013 ("the ET Rules") govern the awarding of costs by the Tribunal. So far as is relevant, it provides:

> "76. Where a costs order or preparation time order may or shall be made
> (1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that
> (a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings or part have been conducted; or
> . .
> (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].

3. The tribunal has a duty in the exercise of its powers under the relevant provisions of the Rules, to give effect to the overriding objective.

4. It is common ground that the Tribunal must apply a two-stage process: first, it must decide if the claimant's conduct reached the threshold of unreasonable conduct under rule 76(1)(a); second, if so, whether to exercise its discretion to make a costs order against the claimant, and if so, in what amount: **Vaughan v London Borough of Lewisham** 2013 IRLR 713, at paragraph 5.

5. The task of the Tribunal in exercising its discretion is to look at the whole picture of what happened in the case and decide whether there has been unreasonable conduct by the claimant in conducting the case and if so, to identify the conduct, what was unreasonable about it, and what effect it had. However, there is no requirement for a precise correlation between the conduct and the costs incurred: **Yerrakalva v Barnsley Metropolitan Borough Council** 2012 ICR 420, following **McPherson v BNP Paribas (London Branch)** 2004 ICR 1398).

6. In the Employment Tribunals, costs orders are the exception rather than the rule: **Yerrakalva**; Gee v Shell UK Limited 2003 IRLR 82.

7. The guidance by the Court of Appeal in **Yerrakalva** held that costs should be limited to those 'reasonably and necessarily' incurred.

8. Awards of costs are intended to be compensatory not punitive: **Lodwick v Southwark London Borough Council** [2004] ICR 884.

## Background

9. On 26 August 2021, Dr Aftab and Prof Scarpa presented separate claim forms against their employer and two named colleagues in which they complained that they had been subject to detriments on the ground that they had made protected disclosures.

10. Both claimants were, at all times, and remain, represented by a national firm of solicitors specialising in employment law; they named, I am informed, a senior partner in their claim form as their legal representative.

11. Their Grounds of Complaint had some differences between them but were in substance, and for current purposes, the same.

12. The claimants were supervisors of a PhD student ('the Student'). The claimants alleged that the Student had failed to attribute work or research to them in his final thesis.

13. They contended that they had made four protected disclosures (they were, it transpired, the same four disclosures) and had suffered various detriments.

14. Disclosures One and Two were said to have been made in writing on 4 November 2019 and on 19 May 2022, respectively, to the First Respondent. The claimants contended that violations of the University regulations had occurred.

15. Disclosures Three and Disclosure Four were said to have been made 'indirectly to the first respondent' in writing on 5 June 2020 and 26 June 2022, respectively, to the Institute of Business Affairs in Karachi and the Higher Education Commission of Pakistan.

16. All four disclosures were said to amount qualifying disclosures because the information provided tended to show a failure on the part of the First Respondent to comply with a legal obligation pursuant to section 43B(1)(b) ERA 1996. The legal obligations said to be relied upon included breaches of University regulations, *'intellectual property rights'*, '*potential plagiarism'* and *'academic fraud'*.

17. The claimants' respective Grounds of Complaint identified detriments they claimed they had been subject to on the ground that they made one or more of the

protected disclosures. In addition, they each averred that they relied on further detriments contained in documents appended to the Grounds of Complaint.

18. Dr Aftab identified detriments in 12 paragraphs contained in his Grounds of Complaint. Prof Scarpa's Grounds of Complaint identified detriments in 14 paragraphs. Ten of those detriments appear to be common to both claimants. Almost every paragraph contained a reasonably succinct description of the treatment they complained about. I find that these paragraphs illustrate that the claimants were capable of expressing their detriments by identifying only the essential facts necessary to understand the complaint made.

19. Some of the pleaded detriments named the second and third respondents as being responsible for the conduct; others did not. Paragraph 14 of the Grounds of Complaint stated *'in the alternative, the claimant claims that he was subject to a detriment by one or more of the first respondent's employees namely [2nd respondent] and/or [3rd respondent]'.*

20. Both claimants, at paragraph 12 of their respective pleadings, averred that they had been subject to additional detriments and they stated *'the various detriments are compendiously described in the claimants' grievances dated June 2021 as appended to these Grounds of Complaint. They are referred to for their terms the sake of brevity and deemed to be incorporated herein'.*

21. Appended to the Grounds of Complaint were grievances, submitted by each claimant to their employer on the first respondent's grievance template.

22. Dr Aftab attached to his Grounds of Complaint his grievances about the second and third respondents. They were both dated 15 June 2021 and comprised of a total of 70 pages of documentation.

23. In the case of Prof Scarpa, he appended his own two grievances against the second and third respondents, again both dated June 2021 and totalling 50 pages.

24. Both grievances were contained on the first respondent's internal grievance form, were expressed in a dense narrative style and required the reader to possess a pre-existing knowledge of the background to have a prospect of understanding. References to '*whistleblowing'* and '*detriments'*, appeared to be terms used, unsurprisingly given their context, in the everyday, non-statutory sense. It was not possible for a lawyer or a tribunal reading those documents to understand, much

less confidently identify a comprehensive list of the detriments relied upon in the litigation. Notably, Mr Flood did not seek to suggest that these documents were capable of being deciphered in the litigation context.

*25.* On 2 September 2021, the claimant's named legal representative and the respondents were sent a notice of a case management preliminary hearing to take place on 10 November 2021. It reminded the parties that their representative *'must fully understand your case and be able to answer any questions they are asked about it'.*

26. On 30 September 2021, the respondents submitted their joint response. They stated that the grievance investigation was ongoing and for that reason they were unable to fully respond the factual allegations. They added that they did not admit that the claimants had made qualifying disclosures and *'in particular'* that they took issue with the contention that the respondents University regulations amounted to a legal obligation and that the entities in Pakistan amounted, as claimed, to responsible persons for the purpose of section 43C(1). They maintained a bare denial of all allegations that the claimants were subject to a detriment.

**First Case Management Hearing – 10 November 2021**

27. On 10 November 2021, the parties attended a case management hearing before EJ Langridge. Both parties attended by their legal representatives, but in the case of the claimant, the named legal representative did not attend. EJ Langridge agreed with the parties' shared position that limited progress could be made whilst the grievance procedure was underway. She recognised that the parties anticipated that there may be future amendments or time points arising, as identified in the joint agenda; she noted that the respondent sought further information about *'the statutory basis'* of the claimants' claims.

28. EJ Langridge made four orders that she required the claimants to comply with, within 28 days of receipt of the grievance investigation report. First, the claimants were ordered to provide further information about the relevant failing. Second, she ordered that the claimant provide the basis upon which they contended that they had made a disclosure to a relevant person.

29. EJ Langridge's third and fourth orders were about the detriments the claimants alleged they had suffered. She required them to both to *'provide further information clarify the detriments already alleged in the claim forms, by providing enough information to enable the respondent to understand what is being alleged to have been done, or not done, by whom and when.*'. She also ordered *'if the*

*claimant seek to amend their claims by adding further detriments which of the reason subsequent to the presentation of the claim forms, they shall identify those amendments with enough information to enable the respondent to understand what is alleged to have been done, or not done, by whom and when.'.*

30. The respondent was ordered, within 28 days of receipt of the information from the claimant, to write to the claimants and the tribunal confirming whether it requires any further information, setting out its position in relation to any application to amend and if advised, to file an amended response.

31. Although both parties subsequently sought to suggest that they had not received written record of the orders, the Tribunal file confirms that they had been sent these orders, and the in case of the claimant, at their request, twice. In any event, both legal representatives had attended the hearing when the orders were made.

32. The claimants both received the outcome to their grievances from Prof Przyborski on 4 February 2022. They did not at that stage comply with the order of EJ Langridge, but the instead took steps within 28 days after the conclusion of the grievance appeal process, a point that the respondents took no issue with at the time, or for the purposes of this application. The claimants received the outcome of their appeal on 16 May 2022.

**First Application to Amend – 13 June 2022**

33. On 13 June 2022, the claimants wrote to the respondent and the Tribunal seeking to apply to amend their claims.

34. The applications for permission to amend their Grounds of Complaint were contained in a relatively short email from the claimants' legal representative. The email addressed, generally, the applicable principles before seeking in general terms *'permission to amend to include the Further and Better Particulars provided as set out'*.

35. The application observed that if the respondents objected to the amendment, leading to a further preliminary hearing, the claimants *'reserved their right'* to *'expand further on the above' 'in accordance with legal principles'.*

36. Appended to that email were two documents, one in respect of each claimant, entitled *'Further and Better Particulars'.* Appended to those documents were yet further documents.

37. The 'Further and Better Particulars' might be described as a composite document, each 7 pages long and containing an attempt to explain the basis upon which the disclosures were said to tend to show a breach of a legal obligation, an explanation for why the disclosures were said to have been made in accordance with s.43G and an attempt to address time points generally.

38. The second half of each set of Particulars relate to the issue of detriments. Both claimants alleged that they had suffered further or additional detriments. Some of those detriments were contained in the 'Further and Better Particulars' whilst others, it was said, were to be found in the appended documents. As with their Grounds of Complaint, the claimants repeated their contention that detriments said to be contained in the appendices were *'deemed to be incorporated'* by the very fact of their attachment. Again, the 'Further and Better Particulars did not identify the detriments said to be contained in the appended documents.

39. Save for the matters described above, the documents were confoundingly difficult to follow. It is easier to describe what the documents did not contain, than what they did contain. The word '*detriment'* whether appearing in the Further and Better Particulars, or in its appendices, was not used, or at least not used consistently, in the statutory sense. It was not possible to identify with any confidence the facts conveyed as background information and those that were said to amount to an unlawful detriment. No attempt was made to distinguish between detriments – if any – that were said to have occurred before presentation the claim form, and those which were said to have occurred, or were only discovered, after the presentation of the claim form. No attempt was made to clarify any detriment already said to be contained in the original pleadings.

40. Dr Aftab appended three documents to his 'Further and Better Particulars'. Two of those documents were further grievances about the second and third respondents and that he had submitted to the first respondent on 6 December 2021. The third document was dated 18 February 2022, and was described to the Tribunal as the claimants' joint appeal from Prof Przyborski's decision, although the 'Further and Better Particulars' equally suggested that the document contained complaints about Prof Przyborski. The appendices amounted to 31 pages in total.

41. Prof Scarpa's 'Further and Better Particulars' followed a similar format to that of Dr Aftab, save that it appended only the 10-page joint appeal document.

42. As before the 'Further and Better Particulars' and their appendices adopted a dense narrative style that was presented in a format and a manner that did not permit a confident understanding of what, precisely, was being complained about in these proceedings.

43. Neither the application to amend, nor the appended documents made any mention of the orders of EJ Langridge.

**Amended Grounds of Resistance**

44. The respondents did not write to the Tribunal, as permitted by EJ Langridge, to seek further direction about the detriments, but instead on or round 13 July 2022 simply filed their Amended Grounds of Resistance. In it, they: accepted the first two disclosures amounted to protected disclosures; denied that Disclosures Three and Four amounted to protected disclosures; contended that the University Regulations did not amount to a legal obligation; contended that the Pakistani institutes were not 'responsible persons' for the purposes of s.43C ERA.

45. The respondents pleaded their response to those detriments explicitly pleaded in the Grounds of Complaint.

46. As to the contention that further detriments were contained in the appended grievances and thereby 'incorporated' into their pleadings, the respondents pleaded as follows: *'we contend that it is not for the respondent to multiple documents [sic] created for an entirely different purpose, to identify which factual allegations constitute specific detriments for the purposes of their claim under section 43B Employment Rights Act 1996. We suggest that it would be a disproportionate use of time and cost and will not assist the Tribunal to respond to each allegation set out in the appendices to the Additional Particulars. For the avoidance of doubt, however, the claimant's claims strongly denied…'.* (emphasis applied).

47. In advance of a further case management hearing, the parties prepared in a joint agenda. In it, the claimant stated that they had made an application to amend on 13 June 2022 to include *'further and additional detriments'*. The respondents confirmed that although they had no objection to that application they *'reserved their position in relation to the . . 'incorporation' of grievances and grievance appeals'.*

**Second Case Management Hearing – 7 September 2022**

48. On 7 September 2022, a further case management hearing took place, before me.

49. The claimants attended by their named legal representative. The claimants were unable to identify, whether from their pleadings or otherwise, the information said to amount to a disclosure of information in relation to Disclosures Three and Four, nor any of the detriments alleged other than those expressly contained in the Grounds of Complaint. The claimants maintained, however, that further detriments were contained in the documents appended to the Grounds of Complaint, but they could not identify what they were, nor the grounds on which they were *'deemed to be incorporated'* into the pleaded case. The claimants were unable explain the basis upon which the University regulations amounted to a legal obligation. They suggested that the parties should be simply left to narrow the issues between themselves before the Final Hearing.

50. The claimants were ordered to provide the information said to have been disclosed, by identifying the precise words relied upon in relation to Disclosures Three and Four and by cross referencing to the original documents for ease of reference, there being no indication from either party of the length of the documents said to contain the disclosures. The claimants were ordered to identify the source of the relevant legal obligation.

51. They were ordered to identify each of the detriments the claimants relied upon and that were said to have been 'incorporated' by appending documents to the Grounds of Complaint or Further and Better Particulars. The claimants were informed that reliance on the narrative style contained in their documents served to obfuscate the essential legal and factual issues. They were reminded of their obligation to identify their complaints by pleading only the necessary facts to enable the respondent to understand the complaint made, by explicit reference to paragraphs 10-12 of the judgment of HHJ Tucker in C v D [2019] UKEAT 0132 19 109. I find that the claimants knew of their obligation to identify only the essential facts necessary to understand the detriment alleged and that this is what they were being ordered to do.

52. Finally, the claimants were ordered to set out their case as to why detriments said to have been contained in appended documents were '*incorporated'* and did not require permission to be relied upon.

53. Other aspects of the claimants' cases were discussed at length and in detail to ensure that both parties understood other aspects of the claimants' case. There was a discussion about avoiding the unnecessary proliferation of documents masquerading as pleadings but taking matters no further forward. Further directions were made for the respondent to provide a response to the information

provided by the claimants as well as directions for the preparation for a Final Hearing. It was to take place in June 2023 and given a time estimate identified by the parties of 10 days.

54. On 8 October 2022, the claimant sought an extension of time to provide the information ordered of them; they observed that they had not yet received a case summary of the last hearing but observed that Dr Aftab and Prof Scarpa's pleadings currently stood at 103 and 54 pages respectively and that further time was required to ensure that the detriments were set out in a *'concise and comprehensive way'.*

**Second Application to Amend and Schedule of Loss - 14 October 2022**

55. On 14 October 2022, the claimants made a second application to amend their claims.

56. As with the earlier application, in June 2022, a short email contained the application itself, expressed in general terms, to which were appended documents said to contain the amendments sought.

57. Each claimant submitted a new document, entitled *'Further and Better Particulars of Complaint - 14 October 2022'.* It contained what appeared to be all detriments said to have been alleged to date – whether appearing in the Grounds of Complaints, or the 'Further and Better Particulars' provided in June 2022, or in any of the documents appended to either document. The new document also contained further detriments, in respect of which permission was said to be sought and, in the case of Dr Aftab, further allegations of contraventions of the Equality Act, which he maintained he did not seek, nor require, permission to advance.

58. In Dr Aftab's case, the detriments were contained in a 35-page document comprising 149 paragraphs and in Prof Scarpa's case, a 22-page document containing 98 paragraphs. They consisted of a narrated account contained in often lengthy paragraphs of half a page or more.

59. The respondents later described this document as amounting to little more than an exercise in cutting and pasting passages contained in earlier documents; I agree that what was provided was a significant departure from what was ordered, and discussed at length at the September hearing; indeed, counsel for the claimants described this as '*the first consolidated document'*. It is not possible to identify with any confidence the matters the contents of these documents that were said to form part of the background facts, and those which are relied upon as amounting to an

unlawful act and nor was it suggested, at least not on any compelling basis, that it was possible to understand the claimants' case from this document.

60. On the same date, the claimants submitted their schedules of loss; Dr Aftab sought an award of £293,561.33 and Prof Scarpa sought £317,500.

61. On 25 November 2023 the claimants purported to comply with the orders made at the hearing on 7 September 2022. They did not, as required, provide the precise words relied upon in their written disclosures that were said to amount to a protected disclosure, or cross reference them with the original documents. They did not provide the source of the legal obligation relied upon. In response to the order to explain the basis of their argument that the detriments said to be included in the appended grievances were '*incorporated'* into the pleadings, the claimants claimed that the observations of HHJ Tucker in C v D, were inapplicable here, since this was not a case in which the details were presented in a witness statement narrative style and that this was a case in which the detriments contended for were obvious.

62. On 15 December 2022, the respondents responded. They said it was *'neither possible nor proportionate to submit an amended response following receipt of the claimants Further Particulars of 14 October 2022'.* They described the document as amounting to little more than an exercise in cutting and pasting previous documents, something that was wholly at odds with the need for concision and specificity that, they said, the tribunal had gone to significant lengths to impress upon the claimants at the previous hearing. They maintained that the narrative style adopted in the Grounds of Complaint *'places the onus on the Tribunal and the respondent to pick through reams of documentation in order to identify the specific legal issues'.* They said that this had been *'compounded still further by continuation by the continued unreasonable approach of the claimants in continuing with the dense narrative style ignoring the clear guidance of the Tribunal'*. They said despite the procedural history, and *'significant time and cost being incurred, the parties are no further forward'.* They *'suggest[ed] that the claimants conduct of this litigation is unreasonable and, while no specific applications are made by the respondent in that respect of this stage, the current approach cannot continue indefinitely'.* They sought a preliminary hearing.

**Third Case Management Hearing - 24 January 2023**

63. A third case management was held, at the respondent's request, and by coincidence, again before me.

64. The claimants again attended by their legal representative, albeit a different solicitor of the law firm. When asked why the previous orders had not been complied with, they explained that there was *'an understanding'* that the previous wording adopted by the claimants was sufficient. The claimants were informed that this was not an adequate or acceptable explanation.

65. The claimants sought further and detailed guidance, they said, to understand where the claimants had not met the standards required of them and emphasising a desire to put their house in order. The hearing took longer than the previous hearing. On this occasion the claimants identified different perpetrators for the detriments contained in their Grounds of Complaint. The claimants were informed that it was a matter for them to decide whether they required permission to amend, and not a matter for the Tribunal or the respondent to attempt to decipher the ever-growing number of documents to anticipate the complaints that may be contained in them. They were informed that the state of the complaints was unacceptable.

66. Previous orders were repeated, albeit in greater detail than before. On this occasion, the claimants were ordered to identify the *'specific detriment'* complained of, by identifying *'the specific act or omission'.* The claimants were given verbal examples of how to express a detriment concisely. Compliance was ordered by 8 February 2023. They were not, as the claimants now contend, effectively ordered to re-plead their cases; they were required to identify the disclosures of information that had not yet been provided, the date on which the detriments occurred, to identify the alleged perpetrator and to identify the document said to contain the allegation to provide an audit trail of each detriment sought to be relied upon.

67. For the avoidance of doubt, at no stage were the claimants required to reduce the number of detriments alleged, no number even having been indicated at this stage, only to identify them.

68. In his oral submissions, Mr Flood suggested that the mischief the claimants faced was an ever-moving target given the ever increasing number of detriments faced. If by that the claimants were referring to the grievance procedure, I disagree. EJ Langridge agreed, at the parties behest, to an informal stay on the proceeding until the grievance outcome was known and subsequently the parties appear to have agreed between themselves for the litigation to remain in abeyance until such time as the appeal was known; the grievance proceedings did not present the claimants with an ever moving target. I can identify no detriments in the *'second consolidated document'* or the final set of pleadings settled by Mr Flood that suggest the claimants contend that they suffered any detriments beyond the grievance process, nor is it apparent that they only became aware of any such detriments after the process concluded; I was not taken to any such examples.

69. The matter was set down for a public preliminary hearing to consider any applications to amend, as well as to consider the prospects of success of the claims and the making of any consequential orders. The date of the preliminary hearing was identified at the hearing, but subsequently deferred by two weeks, to accommodate the availability of the respondents' counsel of choice.

**The Second Consolidated Document**

70. On 8 February 2023, the claimants submitted a further document in compliance with Tribunal orders. It contained further information about the disclosures themselves and a relatively more concise list of detriments – 24 pages of detriments in the case of Dr Aftab and 13 pages of detriments in the case of Prof Scarpa – each providing dates of the incidences complained of and identified the alleged perpetrator as well as where in previous documents the allegation could be found. This was later described by Mr Flood as the *'second consolidated document'.* The claimants accept that this was a lengthy and factually dense document but maintain that was in the nature of the task set of them. I add that not only did it contain a dense narrative style that the claimant had been instructed to avoid, numerous allegations made it difficult to identify whether what was being identified an allegation of poor treatment or a detriment on the ground of a protected disclosure, albeit a weak one which might attract a strike out or deposit order e.g. that the line of questioning by Prof Pryzborski '*suggested'* that he had not read the grievance document, or that he mentioned '*feelings' 'without providing evidence to substantiate them'*. Other allegations required further information, for example, the second respondent '*ignored eight verbal and written requests'*.

71. On 22 February 2023, the respondents submitted their response. Having audited the documents provided by the claimants to date, they set out, in a table format, using different coloured text for ease of reference, relevant information about each disclosure and each detriment, identifying where they contended permission to amend was required and setting out their objections.

72. Mr Flood of Counsel was instructed on behalf of the claimants in the days preceding the preliminary hearing. Late on the evening before the preliminary hearing, Ms Millns for the respondents received what was described as a skeleton argument and chronology prepared on behalf of both claimants. In their skeleton argument, the claimants indicated that they relied on different parts of their written disclosures than previously indicated to establish a disclosure of information. They continued to rely on their contention that a breach of the University regulations amounted to a breach of a legal obligation, but they also sought to revive reliance on alleged breaches of legal obligations which appeared to have been abandoned, such as the allegation that their intellectual property rights had not been

acknowledged, protected or enforced, and *'potential plagiarism'*. Their detriments were amended, and set out in a chronology, which whilst containing errors in transcription that made it impossible for Ms Millns to follow, was not a material feature in the request for, or granting of, an adjournment of the hearing.

73. Dr Aftab withdrew his Equality Act claim. The claimants accepted that the respondents could not be expected to proceed in the circumstances they found themselves in and Mr Flood recognised that his clients' other claims required careful review and revision. The respondents described their position as '*cornered'*, unable to agree or resist the claimants' application to adjourn the hearing, but they placed the claimants on notice of their intention to make a costs application. The hearing was adjourned at the claimants' application and the final hearing listed for June 2023 was by agreement vacated.

74. On 28 April 2023, the claimants submitted draft grounds of complaint that were the basis of their application to amend. The proposed pleadings followed a structured and comprehensive format, addressing the essential legal and factual matters necessary to advance a complaint of whistleblowing detriment; they further indicated, for ease of reference, those matters in the respects in which permission was sought as well as where they believed it was not necessary to secure permission.

75. In their response of 24 May 2023, the respondents accepted some proposed amendments, and resisted others, in particular because to allow such an amendment would require yet further enquiry as to what was meant by the amendment.

76. On 12 May 2023, the respondents made an application for costs against the claimants. It was made pursuant to rule 76(1)(a), in that the claimants had in the conduct of the proceedings acted unreasonably and pursuant to rule 76(1)(c) on the ground that the claimant's application for an adjournment was made fewer than 7 days before the day of the hearing.

77. In summary, they contended that the claimants, despite being legally represented throughout, had repeatedly failed to have regard to guidance, or comply with orders from the Tribunal by repeatedly adopting a prolix and dense narrative style that they had been specifically directed against using. The effect of doing so was to require the respondent and the Tribunal to scour the ever-growing number of documents in an attempt to understand how their cases might be put. The claimants had been reminded that they had only been ordered to provide the barest details necessary to understand their claims. They argued that the

claimants should have either complied with orders, or instructed counsel to review their claims if they were unable to articulate their own cases. They pointed out that now that counsel had been instructed, the claimants had finally accepted that there was a need to amend the claims, something that the respondents had been saying all along, leading to an inevitable last-minute adjournment. They pointed out that there were individual respondents who, some two years post issue, still did not know the case against them.

78. In their response, dated 24 May 2023, the claimants recognised that *'there had been extensive case management of the claims so far'* but that it was their right to bring a claim in respect of all and any claims *'where there is a stateable case'*, and that right is not outweighed by '*pragmatism'*. They had made multiple and genuine attempts to better the pleadings, this was not a case where they have been negligent, rather, they said, they had '*arguably done too much'*. They did not accept that threshold has been met and the Tribunal because the claimants worked hard with Counsel to significantly reduce the number of detriments from '*over one hundred',* in the interests are pragmatism and cooperation and with the overriding objective in mind; they said the matters giving rise to the application had effectively been resolved. Also recognising that the claimants and applied for an adjournment on the day of the hearing, that application was, they said, as the Tribunal recognised in its own case summary, *'somewhat inescapable'*. Other submissions were made about the exercise of discretion, means and quantum.

79. On 31 May 2023, there was a preliminary hearing at which the claimants sought permission to amend their claim in line with their proposed amended pleadings. Neither claimant physically attended the hearing; they elected to attend via CVP. That necessitated significant breaks in the hearing to enable Mr Flood to take instructions from each of his lay clients and his professional client. No orders were made at the conclusion of the hearing; aspects of the proposed pleadings required clarification or revision and there were some simple errors in presentation requiring correction. For the avoidance of doubt, the fact of administrative errors was not only unsurprising, but to be expected, given the volume of information to be marshalled, and they form no part of the respondents' application for costs.

80. The hearing resumed on 1 September 2023; by now Mr Flood represented only Dr Aftab; Prof Scarpa acted in person but indicated that he was content to rely on submissions made by Mr Flood on behalf of his colleague. Some momentum was lost in the intervening period; after discussion, some different amendments were sought, including a change in the qualifying person to whom Disclosures 3 and 4 were made. After review, submissions were heard. On 3 November 2023, orders were made on the application to amend and case management directions were given to enable the parties to prepare for a final hearing. The claimants were to

proceed with approximately 20 detriments each. The time estimate was now identified by agreement as 15 days. The respondent's costs application commenced on 5 January and submissions completed on 25 March 2024. The respondents made oral submissions; the claimants made oral and written submissions.

## Deliberations and Conclusions

Threshold Test

81. I begin with the question whether the claimant's conduct of the proceedings reached the threshold of unreasonableness in rule 76(1)(a).

82. The respondents contend that the claimants' unreasonable conduct commenced at the second preliminary hearing that took place on 7 September 2022 when they were unable to explain the disclosures and detriments in their own claims.

83. It is conceivable that a legally represented party attends a preliminary hearing unable to explain the basic aspects of their own pleaded case and for that not to amount to unreasonable conduct, but I agree with the respondents that this was not one of those instances.

84. The claimants' pleaded reliance on unidentified detriments contained in their grievances demanded, from the outset, clarification. The claimants were subject to an order made by EJ Langridge to provide that clarification; they did not do so. They compounded the problem when in June 2022 when they sought to amend their claims by referring to yet further unidentified detriments in yet further documents. The respondents had made their position clear in their Amended Grounds of Resistance, namely that it was it was not their duty to seek to identify what was being alleged, nor was it a proportionate use of their time to seek to address all potential allegations; in short, they were not prepared to guess the case against them and they pointed out, fairly and properly and undeniably that, nor was the onus on them to do so. It was for the claimants to inform the respondents of the case against them.

85. On 7 September 2022, therefore, in breach of the orders of EJ Langridge and with an outstanding application to amend their pleadings to be determined, the claimants attended the second preliminary hearing in these proceedings. They were unable to articulate at that hearing their case in relation to the detriments they sought to rely on, other than those expressly pleaded in their Grounds of Complaint. It was open to the claimants to abandon reliance on any other detriments, but they elected not to do so. At the hearing, therefore, they

maintained reliance on detriments said to be contained in various documents, that they were unable to identify nor explain how, once identified, they acquired, as they had themselves pleaded, the status of a pleaded case.

86. The claimants submit that because the respondent did not specifically state in the joint agenda preceding the hearing in September 2022 that they lacked comprehension of the claimants' cases, that that *'demonstrates that both parties understood the issues'.*

87. Starting with the claimants' understanding of the issues. If they had understood the issues, one might expect them to have explained their cases when asked at the hearing on 7 September 2022, but they were not able to so, something that Mr Flood could characterise only as '*unfortunate'*. If, as they subsequently represented to the tribunal, the claimants were advancing 'over one hundred' detriments, it was difficult to understand how they suggested a ten day time estimate was appropriate for the disposal of their claims.

88. As for the respondents' understanding, the claimants suggest that prior to the hearing on 7 September, the claimants made no complaint about the style of claimants' pleaded case. That is simply incorrect. The respondents could not have been clearer about their position in their Amended Grounds of Resistance. They drew the Tribunal's attention in the joint agenda to the *'incorporation issue'*. It seems that the suggestion made by the claimants is that the respondents did not complain loudly enough about the state of their pleadings.

89. I conclude that, against the specific litigation history of this case, the claimants acted unreasonably when they attend the hearing on 7 September unable to identify the disclosures of information said to have been made in respect of two of the four disclosures said to have been made and unable to identify the detriments they sought to advance, other than those contained in the Grounds of Complaint.

90. At the hearing, the claimants were ordered to provide the precise words relied upon as amounting to a disclosure of information. The claimants did not comply. The respondents placed the claimants on notice that in their correspondence of 15 December 2022 that they regarded the claimants' failure to advance their claims amounted to unreasonable conduct. Notwithstanding this the claimants did not provide the information ordered, and attended the next preliminary hearing, on 24 January 2023, armed only with an explanation that was, on any reasonable view, unacceptable. They did not fail to comply because of a claimed inability or lack of understanding, but rather their explanation was that they did not comply because of *'an understanding'* that what they had done was sufficient i.e. they decided not

to comply. I conclude that the claimants' failure to comply with orders requiring them to provide further information in relation to Disclosures 3 and 4 was unreasonable.

91. I have reflected on the fact that the orders requiring the claimants to provide a list of detriments did not explicitly direct the claimants to provide information by providing only the essential facts necessary for the respondents to understand the case against them. I have considered whether that is a matter that is relevant or significant in the assessment of whether the failure to comply with those orders was unreasonable. I conclude that whilst relevant, it was not significant to in the assessment that their failure to comply with those orders was unreasonable. First, the orders were not drafted as, or intended to be, anything approaching an unless order. Second, the claimants, who attended the hearing on 7 September 2022 by their legal representative were left in no doubt as to what was required of them by way of compliance. Detailed discussions were had about what was, or was not, an acceptable manner in which to plead a case. Third, they were capable of expressing detriments in an appropriately concise manner, just as they had in their Grounds of Complaint. They did not do so when ordered to do so on 7 September 2022, however.

92. I cannot disagree with the respondents' characterisation that what was produced by the claimants in response to the orders was, in essence, an exercise in cutting and pasting into one document paragraphs of text in which they complained about their treatment. Where the detriments said to be relied upon were expressed in paragraphs which exceeded on occasion half a page in length, it was not possible to decipher, with any reliable confidence, the specific complaints made. The detriments were still not in a state that could be sensibly responded to or determined. Mr Flood suggests that what the claimants produced was the inevitable outcome of being given *'a big piece of work'*. I disagree. At the time there was no indication of the number of detriments said to be relied on and the claimants were informed, insofar as legally represented parties needed to be informed, that the problem was the volume of unnecessary detail that served to obfuscate the essential complaints. I note that the claimants averred in their correspondence of 25 November 2022 that the observations in C v D were inapplicable to their case because, they said, they believed that the detriments they sought to rely upon were clear. It appears that they simply disagreed with the Tribunal's approach.

93. In summary, whereas the orders may have been more robustly expressed, that was not a significant, or it appears, any factor at all, in the claimants' non-compliance.

94. I conclude that the claimants' response to the orders made at the hearing on 7 September 2022 was unreasonable in that they (a) failed to comply with the order requiring them to identify the precise words said to amount to a disclosure of information without acceptable explanation and (b) that they failed to identify each detriment relied upon as required and discussed at the hearing itself.

95. That failure led to a further preliminary hearing on 24 January 2023 when further orders were made, at the claimants' request.

96. The claimants submit that there is an element of '*gamesmanship'* on the part of the respondents, in the criticisms they made of the claimants in their correspondence of December 2022. They contend it amounts to an attempt to *'weaponise the tribunal's well meaning attempt to distil the claimants' case'.* I consider that to be unfair criticism of the respondents' approach. Their response in December 2022 was not only appropriate, but undeniably necessary – the matter could not sensibly proceed to a final hearing in its current state. Further, whilst they expressed their view that the conduct was unreasonable, they expressly declined to make an application for costs. On this occasion, it seems, the respondents are charged with complaining too loudly about the state of the claimants' cases.

97. The claimants did, as ordered, identify the date, the alleged preparator and identify, as against previous documents, where it was first cited, making the information somewhat more navigable. But the format was contrary to detailed and lengthy verbal instructions given at the hearings on 7 September 2022 and 24 January 2023, its narrative style demanding unnecessary time be expended on it. The claimants substantially failed to comply with the orders of 24 January 2023 and this was unreasonable.

98. The application to postpone the hearing on 12 April 2023 was made on the day of the hearing itself; the threshold requirements of rule 76(1)(c) are therefore met.

99. In addition, I observe that the respondents were unaware of the claimants' intention to revise their claims at the hearing on 12 April 2023 until immediately before it. Given the size and complexity of the claims, those actions alone were very likely to the hearing being ineffective. On that date, the claimants attempted to provide to the respondents and the tribunal a table / chronology of the detriments relied upon. It should not have taken the claimants two years after the presentation of their claims to provide clarification. The chronology, in my view, amounted to an woefully belated attempt to provide the clarification the claimants had first been ordered to provide by EJ Langridge at the first preliminary hearing in November

2011. I conclude that it was more likely than not that the information was provided only once the claimants understood that they were at risk of strike out or deposit orders being made.

100. No explanation was forthcoming as to why they behaved as they did. The claimants had time to either seek an adjournment of the orders or the hearing to allow them to instruct counsel; the respondents had sought an adjournment to do just that. The consequences of their failure to properly notify the respondents of their intention to revise their claims would have been known to the legally represented claimants. They allowed the respondents continue to work towards a hearing on a basis that was not to be, or even may not have been, the basis on which they presented their case. Their conduct was disrespectful to both the respondents and the tribunal. To compound matters, almost two years after the presentation of the claims, two individually named respondents, one of whom had since retired, were still unaware of the allegations being made against them. I consider their conduct in failing to provide adequate notice to the respondents of their intention to revise their claims to be unreasonable.

101. The respondents contend that the unreasonable conduct continued when the claimants sought to amend their claims at hearings on 31 May 2023, 1 September 2023 and 3 November 2023. I do not accept that the fact of an application to amend, without more, amounts to unreasonable conduct, particularly where the themselves had contended in their Amended Grounds of Resistance that the claimants' claims required significant clarification.

102. I accept that it ought not have taken the claimants two tribunal hearings, being 31 May 2023 and 1 September 2023, to present a properly formulated application to amend. Although the claims were lengthy and complex, the claimants are intelligent and articulate individuals who were represented by specialist employment solicitors from the inception of their claims almost two years prior. There was nothing before me to suggest that they were incapable of instructing counsel at some sooner point, if assistance was required to marshal their cases. But the fact of the matter remains that the Mr Flood's ability to make progress was hampered at the hearing on 31 May by the physical absence of his professional client who is based in Scotland and for whose convenience a CVP hearing link was arranged, as well as the claimants who attended remotely despite themselves being based locally.

103. I therefore accept that it was unreasonable for the claimants to require a hearing on 31 May 2023, in addition to subsequent hearings, to present their applications to amend.

104. I decline to find that any conduct after the hearing on 31 May 2023 can be properly characterised as unreasonable conduct. The respondents had, in their Amended Grounds of Resistance, called for greater clarity in the claimants' pleaded case; in December 2022, they contended that the present lack of progress could not continue indefinitely and in their costs application they contended that if the claimants' legal representatives were unable to articulate their claims, they should have instructed Counsel. All these concerns were met, effectively, after 31 May 2023.

105. Standing back and looking at the overall picture, the claimants' unreasonable actions caused the respondents to incur unnecessary and avoidable costs for 9 months, during which time they made little to no progress, neither able to defend an unknown number of claims against them nor able to advance their own case in respect of the claims that were known and with no prospect of reaching a final hearing.

Exercise of Discretion

106. I move on then to the second issue, which is whether I should exercise my discretion to make a costs order based on the claimant's unreasonable conduct of the proceedings as I have found it to have been and if so, in what amount or for what period. I have a broad discretion what to do, and I have considered the nature and extent of the unreasonable behaviour, what effect it had (recognising that there is no need for a precise correlation) and the overall context.

107. The claimants' failure to identify the disclosure of information relied upon in Disclosures Three and Four whether at the hearing on 7 September 2022, although unreasonable, made little impact on the litigation process. The respondents had, by that date, already accepted that Disclosures 1 and 2 amounted to protected disclosures and those detriments that were pleaded in the Grounds of Complaint had been responded to. There were, therefore, by 7 September 2022, identifiable claims that were capable of being determined. Furthermore, the claimants' non-compliance with orders requiring further information about Disclosures 3 and 4, although lacking in any acceptable explanation did not, in fact, make any significant impact on proceedings. They were written disclosures contained, it transpired, in relatively short documents, and were matters that could be addressed without delaying the proceedings as, in fact, they were. Therefore, notwithstanding that the conduct was unreasonable and the failure to comply with tribunal orders in this specific regard was without permissible excuse or explanation, in these specific circumstances, I consider that those failings had a negligible impact on the proceedings.

108. By contrast, however, the claimants' repeated inability – and as I have found above, at times, apparent refusal - to articulate in an acceptable manner the detriments they relied upon I have little difficulty in concluding did cause a significant adverse impact on the litigation history, I find, from the hearing on 7 September 2022 until 30 May 2023, for the reasons that follow.

109. The Grounds of Complaint pleaded that further detriments were to be found in the claimants' grievance documents, 120 pages in total, and that they had been attached *'for brevity'*. That was nonsense. The claimants knew what was required of them and they knew how to articulate the detriments in an acceptable way. They did not do so. At no stage before the amendments proposed by Mr Flood, did the claimants ever identify even the number of detriments, and therefore the number of claims they sought to advance. The most charitable interpretation of the claimants' pleadings is that the grievance documents were appended to their Grounds of Complaint for their own convenience. They were created for an entirely different purpose and were wholly unsuitable for use as an expression of their legal claims. I agree with and endorse the respondents' description that the effect of those actions was to place upon the respondents the onus of working through those documents to identify what may be advanced as a claim, and to respond to them in order to safeguard their position. The claimants will have known this; indeed, they have maintained throughout these proceedings that the grievance documents contain elements of their complaints.

110. The first failure to articulate the claimants' detriments other than those expressly pleaded in their Grounds of Complaint, was at the hearing on 7 September 2022.

111. Mr Flood invites me to decline the exercise my discretion in relation to this hearing because, he argues, a case management hearing would have been required in any event. I consider his point to be, in principle, sound, and for that reason excluded from my conclusions any consideration of costs orders in relation to the hearing on 3 November 2023 when effective case management orders were made. But Mr Flood's submission about the hearing on 7 September 2022 might have been fortified had any aspect of that hearing i.e. the preparation for it, the time spent in it, and the consequences of it, led to some progress of the claimants' case. The hearing effected no such progress. No detriments – other than those the respondent had already pleaded to in their amended Grounds of Resistance – were identified at the hearing, or subsequent to that hearing in compliance with the orders made. What was sought of the claimants was the bare essentials required to understand the claims they were bringing before proceeding to a final hearing i.e. the disclosures and the detriments; that is the level of detail that might be

demanded of a unrepresented party, rather than two highly educated professionals with access to specialist lawyers.

112. Had the claimants complied with the orders in relation to the detriments that they sought to advance, other than those expressly pleaded in their Grounds of Complaint, that were made at the hearing on 7 September 2022, the final hearing set down for June 2023 would, more likely than not, have proceeded. It did not and was subsequently vacated.

113. It was the claimants' consistent inability or refusal to articulate with precision the detriments that they contended formed part of their case that led to the respondents incurring further, unnecessary and avoidable, costs thereafter.

114. The claimants sought, and were provided, at the next hearing which took place on 24 January 2023, with a further opportunity to state their case. That led to partial compliance of the orders, in the production of the *'second consolidated document'.*

115. Mr Flood submits that the second consolidated document, in particular, was capable ready comprehension, and required only that the respondents apply their minds to the document; it was simply a matter of *'leg work'* by which I understand him to mean that had the respondents expended the time and effort of doing working through that document, they would have understood the detriments alleged. Setting aside, for a moment, whether it was incumbent on them to do so, that is precisely what the respondents attempted to do by producing a table setting out their understanding of the disclosures and detriments in preparation for the hearing on 7 April 2023. Further, if the second consolidated document was capable of such ready comprehension, one might, as Ms Millns submitted, have expected the claimants to recount them to the tribunal on 12 April 2023, rather than seeking to adjourn the hearing altogether.

116. Whilst Mr Flood submits that the comprehension of his clients' cases was simply a question of effort, those instructing him suggest in their written response to the costs application that the time expended by the respondents in preparing a table of allegations was *'wholly voluntary'*, not required by order of the tribunal and therefore not attributable to the claimants' conduct. I consider that to be an unattractive submission. The claimants had produced, in their second consolidated document, something purporting to contain the detriments that they intended to rely upon, some of which were the subject of applications to amend and all of which were to be considered at the forthcoming public preliminary hearing. The respondents' legal representatives had a duty to their own clients to prepare for the hearing and they had a duty to assist the tribunal in the furtherance

of the overriding objective; they are not passive observers to the litigation process. Put another way, they are expected to, as Mr Flood submitted, *'roll up their sleeves'.* Efforts made by the respondents' representatives to encapsulate the claimants' case, whether for their own better understanding, that of their clients, their counsel or the tribunal at the forthcoming hearing was a necessary and appropriate response to the claimants' further information and was directly attributable to the claimants' own efforts to provide a list of detriments sought to be advanced. The effect of the claimants' partial compliance to the orders made was to put the respondents to additional and avoidable time and expense. Having regard to the detailed schedule of costs submitted by the respondents, the majority of their costs over the period concerned were incurred after 8 February 2023.

117. I turn to the hearing on 12 April 2023, which was postponed on the claimants' application, on the day of the hearing. The claimants attended that hearing giving no effective notice to the respondents that they intended to revise their claims yet again. Those actions alone would have led to the hearing being ineffective. No explanation was forthcoming as to why they behaved as they did. The claimants had time to either seek an adjournment of the orders or the hearing to allow them to instruct counsel; the respondents had sought an adjournment to do just that. The consequences of their inaction would have been known to the legally represented claimants. They allowed the respondents incur further costs by continuing to work towards a hearing on a basis that they either knew was not to be, or may not have been, the basis on which they presented their case at the hearing.

118. The claimants' application to postpone on the day of the hearing was acceded to by the respondents who, I accept, had little alternative. The effect of doing so was to require the respondents to effectively abandon what preparation they had already undertaken in order to start again. I exercise my discretion to make a costs order in the respondents' favour in relation to costs incurred as a consequence of this ineffective hearing on both applicable grounds.

119. I have concluded above that the claimants' conduct in requiring a hearing on 31 May 2023 amounted to unreasonable conduct because it should not have taken professionally represented parties two years after the presentation of their claims an additional hearing date to present their proposed amendments. I have considered whether it is appropriate to exercise my discretion to make a costs order in respect of this hearing and have concluded that it is not appropriate to do so, for the reasons that follow.

120. What the tribunal required of the claimants in order to proceed to a final hearing was confirmation of Disclosures Three and Four , and a comprehensive list of

detriments alleged. Those were the barest of details required to identify the claims brought.

121. Ultimately, however, what the respondents in fact received from the claimants once they had instructed Counsel was, in due course, a comprehensive set of pleadings. On 31 May 2023, the proposed amended claims were subject to detailed scrutiny by the respondents, who attended by their Counsel only, and the tribunal to ensure that the pleading were clear and comprehensive, that any errors were addressed and that no further or additional information was likely to be required in future. That process of stress testing ensured that the following hearing, on 1 September 2023, was effective. Submissions were made by both parties on a set of pleadings settled by Mr Flood that were admirably clear, comprehensive, structured and succinct; it contained all of the necessary legal and factual constituent parts of the claimants' public interest disclosure detriment claims.

122. I make clear that nothing I say should be construed as an endorsement of avoidable frustration, wasted time and delay caused at that hearing, but I am here concerned with question of the impact of the unreasonable conduct on the respondents' costs; I made my views perfectly clear during the hearing itself and do not intend to repeat myself here. I take the view that notwithstanding the above, the costs of that hearing were and are likely to result in a considerable net saving in the time and costs for the respondents going forwards. For those reasons, I decline to exercise my discretion to make a costs order in relation to the hearing on 31 May 2023.

Means and Apportionment

123. Although there was some suggestion in the claimants' written response to the costs application that they sought to place evidence before the tribunal of their means, and directions were given to enable them to do so, at the hearing on 5 January 2024, both claimants verbally confirmed that they did not intend to provide evidence of their means.

124. Neither the respondents nor the claimants drew any distinction between the claimant when considering their respective conduct leading to any costs orders made. I do not consider any distinction can be properly drawn and therefore proceed on the basis that any order for costs should be borne in equal amounts.

125. The claimants accepted that the limit on a summary assessment of £20,000 was applicable to each claimant individually rather than the totality of any costs order

made in these proceedings; although they were given time to reflect on the matter, neither claimant wrote to the tribunal seeking to depart from that position.

Principle of Costs

126. I allow the respondents' solicitors costs from 5 September 2023, being the date of preparation for the second preliminary hearing on 7 September 2023 until 30 May 2023, subject to summary assessment. I allow a notional deduction in recognition that some of work done is likely to have assisted the respondents in their preparation going forward. The identification of that amount is, necessarily and permissibly, an imprecise one. Negligible progress was made before 8 February 2023. Thereafter, once the claimants provided their *'second consolidated document'* the information contained therein was at least navigable. Having regard to Mr Flood's submission that the document indicated – by reference to the number of paragraphs, rather than the substance of the information contained therein – 124 detriments, and having regard to the fact that each of the repleaded claims contained approximately 20 detriments each, I conclude that a notional discount of 15% on the respondents' solicitor's costs incurred after 8 February 2023 to reflect the fact that the respondents are likely to have derived some, albeit modest, value from their preparation time after this date and bearing in mind that a costs order is intended to be compensatory and not punitive.

127. I also allow disbursements in the form of Counsel's fees for the conference on 20 March 2023 in preparation for the hearing on 12 April 2023, the brief fee incurred for the hearing on 12 April 2023. No submissions having been received on the principle of costs of the application, I allow Counsel's fees and for the costs hearings on 5 January 2024 and 25 March 2024; the application itself taking the time it did whilst both Counsel and the tribunal attempted to navigate and interpret the various documents before them.

Summary Assessment of Costs

128. The respondents' costs schedule was considered and costs were assessed on the standard basis.

129. I accept that the nature and complexity of the claims required a Grade A fee earner to supervise the litigation, noting also that the claimants' solicitor is a partner. The majority of the work in the period in consideration was carried out by a Grade B fee earner, and some carried out by Grade C and D fee earners. I note that the hourly rates charged to the respondents were significantly below the applicable guideline hourly rates for solicitors falling within National Band 1 i.e. central Newcastle.

130. The solicitors' costs incurred between 5 September 2022 and 30 May 2023 amounted to £25,134.50. Consistent with their correspondence to the tribunal in December 2022, only a relatively modest amount of the total figure was incurred in the period before 8 February 2023. The majority of the costs were incurred after 8 February 2023, that is, after receipt of the '*second consolidated document'* when significant time was spent reviewing that document preparing for the public preliminary hearing on 12 April 2023, including time spent on preparing bundles, considering the application to amend and liaising with Counsel. Of the amount identified above, £19,296.00 was incurred after 8 February 2023.

131. I am satisfied that the total figure was both reasonably and necessarily incurred as well as reasonable in amount. In the period in issue, no procedural steps were undertaken by the respondents in the advancement of their own cases; the respondents' activity was dictated by and attributable to the claimants' own, unreasonable conduct. None of the items identified in the respondents' detailed schedule of costs appeared to be excessive in amount and none were challenged.

132. In addition, I allow Counsel's fees as indicated above, noting that the claimants had also appeared by their Counsel on each of the dates identified and who was also instructed to conduct a conference with his clients. The amounts were both reasonably and necessarily incurred and were proportionate in amount, taking into account the length and nature of the hearings she attended. I allow a total of £7,333.

133. No VAT was claimed on the sums sought. Reducing the solicitors' costs incurred after 8 February 2023 by 15% and apportioning the resulting figure together with disbursements for Counsel's fees evenly between the claimants, I conclude that each of the claimants shall pay the sum of £14,786.55 to the respondents.

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**Employment Judge Jeram**

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Date: 21 June 2024