EMPLOYMENT TRIBUNALS

Claimant **Respondent**

Dr C Mallon **v** **Steer Energy Solutions Limited**

Heard at: Birmingham **On**: 17 & 29 May 2024

Before: Employment Judge Robin Broughton
Mrs D Hill
Mr K Palmer

Appearances:
For Claimant: in person
Respondent: Mr P Keith, counsel

RECONSIDERATION JUDGMENT ON COSTS

1. Having fully reconsidered our original decision on costs, the claimant is, nonetheless, still ordered to pay the respondent £7500 towards their costs on account of his unreasonable conduct.

2. This judgment is deliberately written in a style that will, it is hoped, be easier for the claimant to read and comprehend, given his stated challenges with processing written information.

3. Having given an oral judgment on liability, the claimant had, nonetheless, subsequently requested written reasons, albeit out of the time limit prescribed by rule 62(3).

4. To assist him, summary reasons are provided here.

Liability decision

5. The claimant had brought a claim against the respondent arising out of an unsuccessful job application that he had made via LinkedIn. The process involved answering a few questions about the required and preferred skills, qualifications and experience and had the option of attaching a CV.

6. The claimant alleged that the respondent had failed to make reasonable adjustments to their recruitment process, by not giving him the opportunity for an oral interview.

7. He said that he needed such an opportunity because his disabilities meant that he was unable to tailor his written applications to specific job roles. There was, however, no specific medical evidence to support this.

8. At the time of this claim, the claimant had been diagnosed with autism and dyspraxia. He was subsequently diagnosed with ADHD. That latter condition was not, therefore, relied on for the purposes of the original claim but the claimant did seek to rely on it as an explanation for what might otherwise be considered to have been unreasonable conduct.

9. The claimant met the essential criteria for the role but did not have at least 2 years' experience of Solid Works, a software program, that was expressly stated to be preferred.

10. The respondent received sufficient applications to shortlist only those who met all of their essential and preferred criteria. They said that, as a result, they had not even opened the CVs of the candidates who did not meet all of their criteria. That was a reasonable and, in our experience, not uncommon approach.

11. The claimant was informed that his application had been unsuccessful and immediately asked why his request for reasonable adjustments had not been actioned. Specifically, he was suggesting that he should have been given the opportunity to explain that he had some experience with Solid Works. It transpired, however, that such stated experience was very limited and largely involved others doing it for him.

12. The claimant said that he had disclosed his disabilities and requested this adjustment on his CV, which the respondent had not seen.

13. When this was explained to him, he did not believe the respondent.

14. When the claimant was offered the adjustment that he had requested, he refused it.

15. The claimant refused to speak to the hiring manager, instead insisting on speaking to HR. The respondent, as a small, specialist company, did not have an internal HR department.

16. The claimant said that unless the respondent acceded to his request to speak to HR within 48 hours, he would approach ACAS in order to bring an employment tribunal claim. He didn't even wait that long, and this claim followed.

17. Ultimately, the respondent did not fill the role, due to uncertainty around the funding for it.

18. Nonetheless, the claimant brought this claim, arguing not only for injured feelings, by virtue of the alleged failure to adjust the application process, but also claiming up to the full financial losses, based on a percentage chance that he may have been successful.

19. On hearing the claim, we were satisfied that the respondent had

    a. not required a CV
    b. not read the claimant's CV and, as a result
    c. not known of the claimant's disabilities or his request for adjustments

    and that, for an automatic application process such as this one, that was not unreasonable. They did not, therefore, have knowledge, actual or constructive of the claimant's disabilities until he expressly alerted them.

20. Accordingly, the initial alleged failure to make a reasonable adjustment, of not allowing an oral application, had to fail. That was before consideration of whether or not the claimant's disabilities had, in fact, put him at a disadvantage.

21. Moreover, as soon as the respondent was aware of the claimant's disabilities, they took all reasonable steps to offer him the precise adjustment that he had requested, but he declined. There was, therefore, no failure on their part. In fact, we concluded that the respondent's approach, at each stage, reflected close to best practice.

22. The claimant said he immediately lost trust in the respondent, assuming he had been discriminated against and impulsively proceeded to early conciliation, failing to follow even the tight timescales he himself had set.

23. The claimant was able to acknowledge that such actions could appear unreasonable on his part but said that they were impacted by his disabilities.

Original costs decision

24. Having given our judgment on liability, the respondent made an application for costs arguing that the claim had always had no reasonable prospect of success and / or that the claimant's conduct in bringing the claims was vexatious or otherwise unreasonable.

25. It seemed to us that the claim was always inherently weak. The claimant had no evidence that the respondent had, in fact, read his CV. He also had no evidence to challenge the respondent's case that they had shortlisted based solely on their essential and preferred criteria for the role when he did not have the latter, nor to dispute that the position had, in any event, been withdrawn.

26. That said, we reminded ourselves that costs awards are the exception, not the rule.

27. The respondent had made an application to strike out the claim on the basis that it had no reasonable prospect of success, or for a deposit order on the grounds that it had little reasonable prospect.

28. At a preliminary hearing, however, EJ Wedderspoon determined that until the respondent's evidence on whether they had, in fact, read the CV, was put to proof, it could not be said that the claim had no reasonable prospects. Similarly, the extent to which experience of using Solid Works was important for the role, would require evidence to be tested.

29. It seemed to us, therefore, that, on those grounds at least, it would not be fair for us to conclude that the claim had no reasonable prospects of success. The claimant had contended that he understood this decision to be saying that his case was, at least, arguable, on the points raised at the time, even though he had no evidence to dispute them.

30. We did, however, conclude that the claimant's actions in bringing and continuing with the proceedings was unreasonable in circumstances where he:

    a. had jumped straight to the conclusion that the respondent was lying when they said they had not seen his disability disclosure,
    b. refused the requested adjustment when offered,
    c. had threatened litigation and moved to early conciliation prematurely, even within his own very tight timescale, insisting on speaking to an external HR consultant, who would have had no authority in any event,
    d. was claiming there was a prospect that he may have been the successful candidate, when he knew he did not have the preferred software skills and, if he'd had an oral application, his very limited exposure to Solid Works, in circumstances where others had helped or done it for him, would have been revealed, when the respondent was, ideally, looking for at least 2 years' experience.
    e. had no evidence to refute the disclosed evidence that the respondent had received a sufficient number of applicants who met all of their criteria, nor to refute that the job ultimately was withdrawn.
    f. pursued the claim, and, potentially, full losses on that basis, continuing with it for a year after it was made clear to him in a similar claim he had brought (against Blacktrace Holdings), that it was not uncommon for employers not to read CVs in 1-click applications. He claimed he needed oral judgments as he either did not read, or could not take in, written judgments, due to his difficulties.
    g. had ignored a costs warning letter from the respondent, which had estimated their future costs at that point at £5k to £10k plus VAT, albeit they transpired to be much higher, not least due to the claimant's approach to proceedings, which resulted in
    h. having a large bundle and 4 day hearing in a case that simply involved whether the respondent had read the claimant's CV, how

they had shortlisted and whether they offered the requested adjustment once aware of the claimant's disabilities.

31. In relation to point (f) above, we note that the claimant appears to say that he needs to do things orally due to his disabilities, but that he also needs things in writing, due to his disabilities, albeit he then doesn't read them.

32. In any event, as a result of the above, we concluded that the claimant had acted unreasonably under rule 76(1)(a).

33. We then had to consider whether to make a costs order as a result.

34. The claimant, at the time, appeared to accept and understand our decision on liability. He argued, however, that the aspects of his conduct that we were concerned with were as a result of his disabilities and hence should not be considered to be unreasonable or, at least, should not result in a costs award.

35. Whilst acknowledging that the claimant had the alleged disabilities and that they may have impacted on some of his perceptions and actions, we were also aware that

    a. the claimant was making around 2000 electronic job applications a year,
    b. he had brought dozens of similar claims, only one of which had been successful at trial,
    c. had shown he was able to learn from mistakes in previous claims and hone his approach, albeit seemingly only to improve his prospects in litigation, rather than in securing a job,
    d. there was no specific medical evidence to support his assertions about the link between his conduct and one or more of his conditions,
    e. LinkedIn have subsequently banned the claimant from their site having formed the view, it appeared, that he was making vexatious job applications, albeit that has not deterred him,
    f. Even if the claimant's conditions may have influenced his conduct that would not necessarily, of itself, make them reasonable.

36. The respondent, having, in our judgment, done nothing wrong, was facing very significant legal costs in defending this claim. Whilst costs awards are relatively rare in the employment tribunals, that does not mean that claimants can simply create, bring and pursue such claims in the manner shown here.

37. We considered, therefore, that we should make a costs award having had regard to the claimant's means.

38. He stated that he "lived off his earnings from ebay", where he sold specialist materials via a service company. He put such income at around £10k per annum on sales of, he said, around £1200 per month, even though the

company accounts appeared to suggest a far higher turnover and significant net assets.

39. The claimant said he had no savings and very limited funds in his current account. He said he owned his home jointly with his partner with a mortgage of around £177k and a value of around £300k.

40. Those amounts were largely compatible with his disclosures at the preliminary hearing.

41. He went on to suggest that, as a result, he would be completely unable to pay any award, although was unable to explain how he managed to survive on the limited income and assets disclosed.

42. Taking his means and mitigations into account, we did not consider that it would be just and equitable to award the respondent their full costs, which significantly exceeded £20,000.

43. However, we did consider the claimant's conduct to have been unreasonable and warranting a significant award. The claimant would not, necessarily, have been aware that the respondent's costs had escalated so rapidly from their original estimate and so we determined that he should be ordered to pay the midpoint of the estimate they had provided to him, being £7,500.

44. We acknowledge that was, arguably, an error on our part, as we omitted the VAT but it was a figure which we unanimously agreed met the test of justice and equity.

Reconsideration application / adjustments

45. The claimant immediately indicated an intention to apply for reconsideration, requesting that enforcement and publication of the judgment be stayed pending that application.

46. It appeared that, as part of that application, the claimant was asserting that he had been unable to fully explain how his disabilities (dyspraxia, ADHD and autism) may have impacted his views on the merits of his claim, his approach to litigation and the reasonableness, or otherwise of the conduct of these proceedings. He said that he needed more time to process his response to the application and to be able to make submissions and provide the relevant supporting evidence.

47. In endeavouring to comply with the overriding objective, including making reasonable adjustments, we initially agreed to the claimant's request to pause, to allow him time to make his application.

48. Around 15 emails followed over the next month, covering 200 pages in the reconsideration bundle, which were often difficult to follow, relying on several different AI generators of submissions about reasonableness, costs

awards and disability discrimination generally and enclosing various attachments. They appeared to demonstrate an ability to create significant work for others when focussed on a goal of reducing the claimant's financial exposure.

49. Whilst the claimant may believe that such an approach helps him, as he merely types in a question and then forwards the responses, the fact is those submissions simply generate a lot of work and confusion, and are often highly unreliable, literally creating non-existent case law and precedent.

50. Nonetheless, within them, it was able to be ascertained that the claimant was seeking a reconsideration on the grounds previously intimated, and it seemed to be in the interests of justice to allow him to put his case, not least in an effort to accommodate his disabilities.

51. As a result, we determined, as a further adjustment, that the fairest approach was to rehear the application from scratch. We considered the judgment in Ms F Habib v Dave Whelan Sports Ltd 2023 [EAT 113] in this regard and generally.

52. The claimant was provided with a summary of our decision from the liability hearing (as his request for written reasons had been submitted late). He was also provided with a summary of our initial findings on unreasonableness and an indication of the medical evidence he would need to provide in support of his assertions and that he would need to fully evidence his case on his alleged limited means. Nonetheless, such evidence as there ultimately was fell well short of what would, ordinarily, be required.

53. He was granted additional time to provide such evidence and, when it came to the hearing, was allowed to give oral evidence without a written statement as was the witness he called as an expert.

Reconsideration hearing

54. Having made all of those adjustments, the claimant was happy to proceed and the respondent repeated their application.

55. The claimant had produced letters from his GP and from Sara Heath, who was adduced as an expert witness, with a particular interest in co-existing neurodivergences and learning disabilities.

56. We heard that she had a masters degree in special needs education and, since leaving education, worked in the field, providing support to local authorities, organisations and individuals.

57. She met the claimant via a support group which she runs on a regular basis.

58. The respondent contended that, as

a. Ms Heath did not have specialist medical, or psychiatric qualifications,
b. nor had she worked with the claimant on an individual basis,
c. nor could she speak specifically to how the claimant's disabilities may have impacted him personally, as opposed to more general observations,

we should give little or no weight to her evidence, albeit they had no objection to us hearing it.

59. In short, Ms Heath's evidence and, indeed, that of the claimant was that all of his actions which could be perceived as unreasonable, were, potentially, attributable to his disabilities.

60. For example, she said that repeated rejection led to a sensitivity which could trigger distrusting responses that may otherwise be viewed as rude and, ultimately, lead to the impulsivity of bringing a claim prematurely.

61. Whilst unable to say that is what happened in the case before us, she considered the actions of the claimant to have been typical of someone with his symptoms and sensitivities and not disingenuous as they may otherwise appear.

62. We initially had some sympathy with that view.

63. We are aware, from the evidence before us and the Equal Treatment Bench Book, that dyspraxia can, amongst other things, affect people's ability to organise and multi-task, as can ADHD. The latter can also result in an inability to focus, impulsivity and a lack of attention to detail. Autism can lead to literal language interpretation and all 3 can potentially impact an individual's ability to judge socially acceptable behaviour.

64. In addition, the conditions can both impact, and be impacted by, stress and anxiety.

65. That is by no means an exhaustive list.

66. The claimant's evidence was that he genuinely wanted a job and that his scattergun approach of applying for thousands of positions had worked for him in the past, albeit the distant past.

67. Perhaps surprisingly, he said that he only brought claims against those employers who acknowledged his applications and rejected him, as opposed to those who simply ignored the applications, or chose not to respond.

68. In discussing his means, it came to light that his previous disclosures at both the preliminary hearing and the previous costs hearing, were materially inaccurate in a number of significant ways.

69. It transpired that, as well as his jointly owned home in Staffordshire, with around £120,000 in equity, shared with his partner, the claimant personally owned a property in Northern Ireland, with significant equity, as well as 2 wholly owned flats in Aberdeen, worth £50k each.

70. Those properties also generated rental income, albeit one was currently vacant. The claimant initially did not mention the Northern Ireland property, then said he only owned half of it, before confessing he had bought out his sister's share and it was wholly owned.

71. Neither the full assets, nor the income, had previously been disclosed, despite express instructions and giving his evidence under oath.

72. In addition, the claimant had originally said that he lived on what he made on ebay, via his personal company, RenovareUK.co.uk Limited. The only evidence produced in support of the alleged level of income were some sales printouts from ebay and paypal and the micro accounts, which did not reveal the profits or drawings.

73. That said the accounts appeared to show assets of £30k to £40k, rising to almost £77k in the most recent filing, suggesting both higher income and assets at the claimant's disposal.

74. It was also, somewhat reluctantly, revealed that the claimant had, on his evidence, made around £19,000 in the last 2 years in tribunal settlements. Even if accurate, that would suggest that the amount on which the claimant lived was more than double that originally claimed. Other figures in the bundle before us, suggested the figure may be far higher (eg anecdotal evidence in the press or on LinkedIn, suggested a figure of £35k) but we took the claimant's evidence at face value.

75. This was before consideration of the claimant's benefits, which our notes say were, once disclosed, said to be from personal independence payments (PIP), at around £100 per month. That may have been an error, as the higher rate non-mobility element claimed amounts to over £100 per week.

76. As a result, even on the claimant's revised figures, both his income and assets were significantly more than double the amounts previously disclosed.

77. These were very significant failures that all appeared to favour the claimant and for which no satisfactory explanation was offered.

78. If the claimant's errors were merely as a result of his alleged inattention to detail, it was, at best, surprising, that they all appeared to be to his potential advantage.

79. Ms Heath said it was her view that the claimant was genuinely looking for work and was pursuing litigation to educate employers, seek justice and make the world better for disabled job applicants including his son.

80. Neither she, nor the claimant, however, were able to explain how that sat with him accepting significant sums in confidential settlement of some cases.

81. Ms Heath said that it was not uncommon for people with the claimant's disabilities to engage in repetitive behaviours, such as bringing numerous claims, even related to matters that had previously been unsuccessful. She described this as a "clean slate" approach.

82. It was suggested before us that there were at least 60 such claims, although we understand there have been more than 100, potentially far more.

83. There were, however, a number of inconsistencies or imponderables in the evidence of Ms Heath and / or the claimant.

84. For example, they were unable to explain

    a. How the claimant was able to submit lengthy submissions promptly as part of the tribunal process, yet unable to apply himself similarly to his job applications,
    b. How he was able to manage numerous concurrent claims but unable to apply the necessary skills to do so in other areas of his life
    c. Why the claimant needed oral applications / hearings because he struggled with dealing with things in writing, then that he needed judgments in writing because he could not take them in orally, then, when challenged on why he had not learnt from previous judgments, such as his case against Blacktrace Holdings, saying he did not read them and / or could not take them in.
    d. Why the claimant would have accepted thousands of pounds in settlements, without any indication that his claimed objectives had been met, if financial reward was not his motive for litigation,
    e. The significant failures to disclose both income and assets.

85. In relation to point d above, the claimant's explanation that he accepted settlements for the sake of his mental health, to avoid the stress of litigation, lacked credibility given his numerous other claims.

86. In addition, neither the claimant, nor his expert, were able to explain how the claimant had managed to obtain 4 degrees, including a PhD, prior to diagnosis of any of his disabilities and hence any adjustments being made to assist him.

87. It is, of course, to the claimant's immense credit that he managed to do so, but it does suggest that his impairments may not be as severe as claimed. We note, for example, that his disabilities are not so severe as to render him unsafe to drive.

88. It was suggested by both Ms Heath and the claimant that he was unable to learn from previous mistakes, such as not believing that employers did not read CVs, and that each claim was a reset, but he

    a. explained his process of scientific research was very much one of trial and error, tweaking his approach each time to achieve the desired result,
    b. appears to have taken a similar approach to his job search, or rather the proceedings arising from it. Firstly, following a decision that a potential employer was unaware of his disability, by including his disability disclosure at the end of his CV, then, when told some employers do not read to the end of CVs, moving it to the top etc.

89. These appeared to be tweaks designed to improve the prospect of successful litigation, rather than a successful job application, in line with the claimant's scientific approach.

90. It was also suggested that those with the claimant's disabilities are unable to accept that they may be wrong, see the bigger picture or that there may be other explanations for their perceived treatment.

91. If that were right, it did not explain how, when ordered to pay a costs deposit, the claimant was able to accept the claim's weakness and withdraw his claim, to avoid the risk of negative financial consequences. Nor did it explain how he was able to learn and adapt to the circumstances in unsuccessful claims, honing his approach in new claims, but not review how they impacted his prospects in ongoing claims.

92. We wish to stress that we accept that the claimant has the disabilities claimed and that these doubtless cause him significant challenges in the job market.

93. We also accept that Ms Heath has significant knowledge of neuro divergence and learning difficulties and has many years' experience, doing sterling work to help those with such challenges and, indeed, helping others to understand them.

94. However, we do not accept that she could be classified as a medical expert, nor that her evidence was compelling when it came to explaining some of the apparent anomalies, particularly in seeking to suggest that all of the claimant's otherwise unreasonable conduct, could be fully attributed to his disabilities.

95. Her passionate partiality was also unable to explain

    a. How the claimant was able to learn from his mistakes when it increased his prospects of financial reward, but not otherwise,

b. Whether, in her opinion, someone with the claimant's disabilities could ever act unreasonably, what that would look like and how we could differentiate between personality and disability,
c. How the claimant could have achieved numerous degrees and secured previous jobs before diagnoses and adjustments, but not since.
d. The apparent profit motive of the claimant's actions.

96. Having approached the costs application from scratch, we nonetheless remain of the view that it would be unfair to say that the claim had no reasonable prospect of success in relation to the matters aired at the preliminary hearing on strike out. We again reminded ourselves that costs awards are the exception not the rule.

97. Nonetheless, we remain of the view that the claimant's actions in bringing and continuing with the proceedings was unreasonable in circumstances where his claim was weak and he:

a. refused the requested adjustment when offered,
b. had threatened litigation and moved to early conciliation prematurely, even within his own very tight timescale, insisting on speaking to an external HR consultant, who would have had no authority in any event,
c. was claiming there was a prospect that he may have been the successful candidate, when he knew he did not have the preferred software skills and, if he'd had an oral application, his very limited exposure to Solid Works, in circumstances where others had helped or done it for him, would have been revealed, when the respondent was, ideally, looking for at least 2 years' experience.
d. Had no evidence to refute that the respondent had received a sufficient number of applicants who met all of their criteria, nor to refute that the job ultimately was withdrawn.
e. Pursued the claim, and, potentially, up to full losses on that basis, continuing with it after it was made clear to him in a similar claim he had brought, that it was not uncommon for employers not to read CVs in 1-click applications.
f. claimed he needed oral judgments as he either did not read, or could not take in written judgments, due to his difficulties, yet had tweaked his approach to applications and litigation, when it was to his advantage,
g. Had ignored a costs warning letter from the respondent, which had estimated their future costs at that point at £5k to £10k plus VAT, albeit they transpired to be much higher, not least due to the claimant's approach to proceedings, which included sending incredibly lengthy correspondence, often generated by AI, requiring little effort on his part, but wasting significant time and cost for the respondent and tribunal.

98. That is all before the very significant non-disclosures of assets, means and other sources of income.

99. We consider that the claimant's approach to this claim and more widely was almost entirely focussed on trying to secure favourable settlements or awards, as opposed to a declaration.

100. The fact that he only brings claims against employers who have the courtesy to respond to his applications, seemingly confirms this.

101. He is able to adjust his approach to those aims and goes to great lengths to do so but, seemingly, is unable to do the same in relation to securing a job.

102. He maximises his claimed losses, to increase his potential recovery, yet goes to considerable lengths to minimise the risk of adverse costs awards and, in that regard, failed to disclose all his assets and sources of income.

103. That is not to say that he does not want to work, although that remains a distinct possibility. Rather, if securing a job is his ambition, he is going about it completely the wrong way, despite this, seemingly, having been explained it to him by his partner, support workers, advisers and employment judges.

104. His reluctance to admit the income stream he receives from settlements, let alone produce the evidential support, further supports this view.

105. In those circumstances, based on what we know now, the claimant's conduct was more unreasonable than we originally determined and verging on the vexatious.

106. All of the unreasonableness we have found was based on the claimant

a. rushing to litigation
b. unreasonably refusing the requested adjustment when offered
c. unjustifiably maximising the potential claim value and recovery
d. continuing the proceedings in the absence of evidence to refute the respondent's assertions and ignoring the findings in previous claims, save where it suited his ambitions,
e. minimising his exposure to a costs award / the amount of such an award
f. taking a litigation factory approach

107. It was of significant note that all of those failings were principally, if not solely, about instigating yet another claim, rather than securing a job, to create an income stream to improve the claimant's financial position at what he may have perceived as low risk of adverse cost consequences, with little or no regard to the considerable time, costs and stress caused to the respondent in this case, the tribunal system and respondents generally.

108. However, we have based our decision on his conduct in this matter, albeit informed by that background.

109. For all of the reasons already given, we consider that his conduct was unreasonable and principally motivated by improving his financial position, including

a. only selecting respondents who had the courtesy to reply, rather than those where he may have had an arguable case on suitability for the role,
b. unjustifiably maximising his claim value in relation to a job he was unlikely to be suitable for

110. We acknowledge his disabilities but do not accept that they fully explain, let alone justify such conduct. The medical and other expert evidence adduced fell significantly short of adequately defending his approach, let alone attributing it all to his disabilities.

111. We seriously considered whether the additional information before us, not least the material omissions of evidence as to the claimant's means and how that informed us as to his likely motivations, should result in a far higher costs award, but, in consideration of the claimant's disabilities and the fact that it was his application for reconsideration, we have declined to do so.

112. Accordingly, taking the midpoint of the respondent's estimate from their costs warning letter, we make the same award on the same basis.

113. The claimant must pay to the respondent the sum of £7500.

114. It is important, however, for the claimant to realise that his current approach to job applications and litigation is not working. The following suggestions are made in the hope that they assist.

115. He would do well to focus his attention (and any support he can obtain from his partner, agencies, specialists or others) on finding far fewer suitable jobs and tailoring his applications to those positions that he has a realistic chance of obtaining, as opposed to making thousands of job applications and dozens of speculative tribunal claims.

116. The aspects of his conduct that we have identified as unreasonable in bullet points above, may well also be considered unreasonable in future, or ongoing, claims.

117. He would do well to seek legal advice and support before commencing or continuing such claims.

118. He should always give full and appropriate disclosure of his means and, as this judgment will be published, the information that he has provided to us will be available.

119. Given the means that were, ultimately, disclosed to us, albeit still not fully evidenced, there is a significant prospect that, if his conduct is deemed unreasonable in future claims, the risk of higher, potentially much higher, costs awards is a real one.

120. Nothing said above is intended to deter the claimant, or anyone else, from bringing genuine claims, on sound grounds, even if they are ultimately unsuccessful.

121. Merely by way of example, the claimant would be well advised to be reasonably confident of being able to demonstrate that

a. He was disadvantaged by some aspect of the application process (this would include specific medical evidence to support the assertion that his disabilities mean he cannot tailor his applications and needs an interview)
b. The respondent knew of his disabilities and had unreasonably refused requested adjustments,
c. He had not unreasonably refused such adjustments when offered,
d. He had not made unreasonable demands or rushed to litigation,
e. He had a genuine and realistic desire to obtain the position applied for and a realistic prospect of doing so,
f. He was not inflating his claimed losses in relation to jobs he had little or no realistic prospect of securing.
g. He was not, by his conduct, unnecessarily running up the other side's legal fees.
h. When asked about his means, he has provided full, frank and evidenced disclosure of all income streams and assets, including settlement payments, rental properties and business earnings.

122. We sincerely hope that the claimant is able to understand and accept this judgment and the extent to which we have given him the benefit of the doubt. These points are presented in a way that is intended to be of assistance to him.

123. We also acknowledge that the respondent was put to significant additional costs, not least by virtue of this reconsideration hearing, but no additional application was made in relation to those. Their total costs apparently exceeded £70,000. We hope they understand that, given the claimant's submissions, disabilities and requests for adjustments, we felt it necessary in order to ensure fairness and compliance with the overriding objective.

124. We reiterate that we were pleased to observe a small employer taking their responsibilities under the Equality Act 2010 so seriously and

regret that the claimant's unreasonable approach to litigation has cost them so much.

Employment Judge Broughton

15 June 2024