EMPLOYMENT TRIBUNALS

Claimant: Ms Q
Respondent: Stoke on Trent City Council
Heard at: Birmingham
On: 1 November 2024
Before: Employment Judge Meichen, Mr P Simpson, Mrs R Pelter

JUDGMENT

The Claimant's application for a preparation time order succeeds in part and the Respondent is ordered to pay the Claimant the sum of £132 (4 hours x £33).

REASONS

Introduction

1. The liability hearing in this case took place between 29 January and 12 February 2024. The Claimant's claim that she was sexually harassed by Mr X on 10 July 2018 succeeded. The Claimant's pay claims were not determined and were reserved to be considered as part of the remedy hearing. The other claims brought by the Claimant failed.

2. A remedy hearing took place on 1 and 2 July 2024. The Claimant's claims for unpaid holiday pay and wages succeeded by consent. The Respondent was ordered to pay the Claimant the total sum of £3623.35 in respect of unpaid wages and holiday pay. The Claimant's claim relating to accrued flexi time failed. The Tribunal ordered the Respondent to pay the Claimant compensation for discrimination in the total sum of £55799.56 (made up as follows: 18000 injury to feelings + acas uplift + interest = 24300, 13333 injury to health + acas uplift + interest = 17999.56, 10000 aggravated damages + acas uplift + interest = 13500).

3. At the conclusion of the remedy hearing the Claimant indicated she wished to apply for a preparation time order. The grounds for the application were extensive. There was insufficient time to deal with the application. The Tribunal directed that the application could be dealt with on the papers, and we made case management orders for the application to be set out in writing and for the Respondent to respond in writing.

4. In compliance with our orders the Claimant prepared a written preparation time order application accompanied with a bundle of supporting evidence and the Respondent provided a written response to the application with a further bundle of supporting evidence.

5. Neither party requested an oral hearing to determine the matter. Both parties have made submissions in writing, thereby discharging the obligation that they be given a reasonable opportunity to make representations. Having considered the documents from both parties and taking into account the overriding objective, we considered that it was proportionate and in the interests of justice to provide our decision without the need for a hearing.

6. The earliest the Tribunal could meet to consider the application was 1 November 2024. We read the application and the response and the documents to which we were referred. We considered all the points raised by the parties. We discussed and unanimously agreed upon our decision.

7. Unfortunately the Employment Judge experienced a period of serious ill health and was off work from mid November 2024 to early January 2025. That explains the delay in providing this written decision.

8. The Claimant was ordered to provide all the evidence which she wished to rely on in her preparation time application by 18 July 2024. However, on 18 November 2024 the Claimant wrote to the tribunal to say she had by oversight omitted to include in her evidence bundle a set of photographs that she wished to rely on. The Claimant did not explain why it had taken her 4 months to rectify this oversight. This unexplained delay meant that the Respondent had been unable to consider the photographs as part of their response and the Tribunal panel had been unable to consider them when we met to consider our decision on 1 November.

9. In these circumstances the Employment Judge has considered the Claimant's application to rely on late evidence. The application is refused because it would not be in the interests of justice or in accordance with the overriding objective to grant it. In particular granting the application would necessitate giving the Respondent an opportunity to respond to the new evidence and the Tribunal then taking further time to consider the new evidence and any response by the Respondent. This would create further delay and cost. The Claimant had the opportunity to provide all the evidence she wanted to rely on and if she missed something out by mistake she could and should have rectified that much quicker than 4 months later.

10. Furthermore, the new evidence is not capable of changing the decision the Tribunal has already made. The photographs relate to the Claimant's 21st ground of application. This ground is a complaint that the box sent to the Claimant containing the hard copies of the final hearing court bundle shortly before the final hearing in January 2024 was already open when it arrived with the Claimant. The Claimant said it must therefore have not been secured appropriately by the Respondent and this raised concerns about the potential for the documents to have fallen into the wrong hands. Whilst the

photographs are not entirely clear they appear to support the Claimant's complaint to the extent that the lid of the box had been secured with tape but some of the tape had broken off and so the lid could well have been insecure.

11. When the tribunal analysed this point we noted that there was no suggestion that the bundles were inappropriately accessed as the Claimant feared. Even accepting the Claimant's point that there had been an "oversight" regarding the sealing of the box it was our view that the Respondent could not be regarded as acting vexatiously, abusively, disruptively, or otherwise unreasonably regarding packaging the bundles. At most this was an administrative mistake in not sealing a box as well as it could have been. It was not unreasonable conduct which could justify the making of a preparation time order. The photographs support that view.

The law

12. Where a party has no legal costs because they are not legally represented, but they have spent time working on the case, the party can claim for a preparation time order.

13. The Employment Tribunal Rules provide us with the power to award a preparation time order in certain circumstances set out in those Rules.

14. A preparation time order is defined in Rule 73(2) as follows:

(2) A preparation time order is an order that the paying party make a payment to the receiving party in respect of the receiving party's preparation time while not represented by a legal representative.

15. The relevant circumstances when a costs order or a preparation time order may be made are set out in Rule 74:

(2) The Tribunal must consider making a costs order or a preparation time order 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 of it, or the way that the proceedings, or part of it, have been conducted,
(b)any claim, response or reply had no reasonable prospect of success, or
(c)a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which that hearing begins.
(3) The Tribunal may also make a costs order or a preparation time order (as appropriate) on the application of a party where a party has been in breach of any order, rule or practice direction or where a hearing has been postponed or adjourned.

16. The Claimant made it clear in her application that she was relying on the above two grounds for a preparation time order. It is important to note that even if one (or more) of the grounds for awarding a preparation time order is

made out, the Tribunal is not obliged to make an order. Rather, it has a discretion whether or not to do so. In summary the Tribunal Rules impose a three-stage test. First, the tribunal must ask itself whether its costs jurisdiction is engaged. If so, secondly, it must go on to ask itself whether it is appropriate to exercise its discretion in favour of awarding costs against that party. And the third stage is the determination of the amount of any award.

17. Other Rules relevant to our decision are as follows:

Procedure
75.—(1) A party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties.
(2) The Tribunal must not make a costs order or a preparation time order against a party unless that party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order).

The amount of a preparation time order
77.—(1) The Tribunal must decide the number of hours in respect of which a preparation time order should be made, on the basis of—
(a)information provided by the receiving party on the preparation time spent, and
(b)the Tribunal's own assessment of what it considers to be a reasonable and proportionate amount of time to spend on such preparatory work, with reference to such matters as the complexity of the proceedings, the number of witnesses and documentation required.
(2) The hourly rate is £44 and increases on 6 April each year by £1.
(3) The amount of a preparation time order must be calculated by multiplying the number of hours assessed under paragraph (1) by the rate under paragraph (2) which is applicable to the year beginning 6 April in which the preparation time was spent.

Ability to pay
82. In deciding whether to make a costs order, preparation time order, or wasted costs order, and if so the amount of any such order, the Tribunal may have regard to the paying party's (or, where a wasted costs order is made, the representative's) ability to pay.

18. The purpose of costs and preparation time orders is to compensate the receiving party and not to punish the paying party. Questions of punishment are irrelevant both to the exercise of the Tribunal's discretion as to whether to make an award and to the nature of the order that is made (Lodwick v Southwark LBC [2004] ICR 884). Therefore it is necessary to examine what loss has been caused to the receiving party. In this regard the Court of Appeal in Yerrakalva held that costs should be limited to those 'reasonably and necessarily incurred' and also made clear that whilst there is no requirement for the Tribunal to determine whether there is a precise causal link between the unreasonable conduct in question and the specific costs being claimed, that does not mean that causation is irrelevant.

19. In determining whether to make an order under the ground of unreasonable conduct, a Tribunal should take into account the "nature, gravity and effect" of a party's unreasonable conduct (McPherson v BNP Paribas [2004] ICR 1398). The Tribunal has to ask whether there has been unreasonable conduct by the paying party in bringing, defending or conducting the case, and, in doing so, identify the conduct, what was unreasonable about it, and what effect it had (Yerrakalva).

The Claimant's application and our analysis of it

20. The Respondent has been legally represented throughout the proceedings. The Claimant has not been legally represented at any stage.

21. The Claimant relies on 26 grounds for her application. We shall set out each ground followed by our analysis.

1) The Respondents did not submit the ET3 Form on time; in fact, it was several weeks overdue.

22. At a preliminary hearing on 3 August 2022, Employment Judge Harding allowed the Respondent's application for an extension of time to submit its ET3. There was no finding by Employment Judge Harding that the Respondent had acted vexatiously, abusively, disruptively, or otherwise unreasonably in filing the ET3 out of time. It is implicit in the decision to permit the response out of time that the Respondent had not acted in a way that can now described as vexatious, abusive, disruptive or otherwise unreasonable. We find they did not act in such a way in respect of missing the deadline. Although not specified by the Claimant the fact that the Respondent missed a deadline means they may have been in breach of an order of the Tribunal. However even if that were the case we would not exercise our discretion to make an order. Deadlines are often missed in litigation and not every missed deadline will justify making a costs or preparation time order. There is no evidence that missing the ET3 deadline in this case caused any particular problems. The case was still at a very early stage and was successfully case managed to final hearing without any issues caused by the ET3 being filed late. Furthermore there was no evidence that the ET3 being filed late caused the Claimant to incur any extra preparation time.

2) In the initial preliminary hearings (3rd and 18th August 2022), the Respondents strongly asserted:

a) That I should not be allowed to include the matter of the sexual assault as a claim.

b) That I should not be allowed to categorise my claims regarding the poor treatment following the assault under both sexual and racial harassment/discrimination &c., leaving me no choice but to opt for the racial category.

c) That I should not be allowed to include additional disabilities i.e. migraines, IBS, and more importantly, my mental health to the claim, citing that I could only choose one disability. This ultimately prevented me from bringing forward relevant claims about these conditions, leaving me only able to include the disability relating to my back and shoulders. This despite it being established earlier in the hearing by Judge Harding that I was on the maximum dosage of anti-depressants and other medication for my various health conditions.

23. At preliminary hearings on 3 and 18 August 2022, the Respondent advanced jurisdictional applications in relation to the Claimant's claim. The Respondent was reasonably entitled to do that. Raising jurisdictional arguments was not vexatious, abusive, disruptive or otherwise unreasonable. It was the Claimant's choice as to which claims she wanted to pursue and which disabilities she wished to rely on. The Claimant had the opportunity to present her arguments to the Tribunal. The Tribunal made a decision as to which claims should be allowed to proceed and on what basis. The Respondent was reasonably entitled to present its arguments as to the viability of the proposed claims - raising such issues was not vexatious, abusive, disruptive or otherwise unreasonable.

3) The Respondents disrupted the proceedings on 18th August 2022 with a request for Mr [X] to be granted an anonymity order and that without his knowledge or consent. This particular discussion took up a considerable amount of hearing time leaving me at a disadvantage as I was not able to list all my claims.

24. In advance of the preliminary hearing on 18 August 2022, the Respondent made an application for an anonymity order for Mr X and this was considered by the Tribunal at a preliminary hearing on 16 December 2022. The Claimant had been granted an anonymity order in the preliminary hearing on 3 August 2022. The Respondent's application on behalf of Mr X was successful. The Respondent was reasonably entitled to make this application and doing so was not vexatious, abusive, disruptive or otherwise unreasonable. To the extent that the Claimant suggests that there was insufficient time to address other matters she wanted to raise because of the Respondent's application being dealt with, the Claimant should have raised that matter with the Judge hearing the case who would have given directions as necessary. There were a number of preliminary hearings in this case and the Claimant had a reasonable opportunity to raise all the points she wanted to.

4) In preparation for the preliminary hearings in August 2018, I submitted a comprehensive summary of claims document, along with the full text of claims comprising approximately 250 pages. On 25th July 2022, Ms Caroline Jones, representing the Respondents, agreed that this full documentation was to be included in the hearing bundle. Due to technical limitations at the time, I had sent these documents as several files to her and the Tribunal; however, they collectively formed a complete and cohesive

document. Additionally, I complied with the Tribunal's request, specifically from Mr Harvey Virk, to upload these documents to the eJUDICIARY System. During the preliminary hearings in August 2022, both Judge Harding and I were working through this documentation to identify my claims. However, during the preliminary hearing on 16th December 2022, the Respondents refused to include the full documentation in the hearing bundle. This deliberate omission resulted in Judge Kelly (female) not having access to the relevant information that was available to Judge Harding. This exclusion was not only procedurally unfair and unjust but was done without my consent. The summary of claims and the full text of evidence were always intended to be one complete and inseparable document. Ms Jones had previously accepted this, and under no circumstances were these documents meant to be separated. It is entirely unacceptable that the Respondents produced only the summary of claims for this particular hearing, thereby depriving Judge Kelly (female) of crucial information necessary for a fair and just hearing.

25. There was a preliminary hearing on 16 December 2022. The Claimant was able to provide the documentation on which she intended to rely and to make representations. It is the Claimant's own evidence that she uploaded the documents to the Tribunal system and therefore the Judge hearing the case could have accessed them had the Claimant wished to refer to them. There was a dispute between the parties over whether the Claimant's 250 page document was a proper expression of her claim as it had been filed long after the claim form. In our view the Respondent was reasonably entitled to raise its concerns about this long document and it was for the Judge at the preliminary hearing to decide what to do about this and, in particular, whether she needed to view the full 250 page document. The Respondent has provided emails showing that the draft bundle was sent to the Claimant in advance of the hearing, and she did not say that she wanted anything extra added to the bundle. In these circumstances we consider that the Respondent did not act vexatiously, abusively, disruptively, or otherwise unreasonably in preparing for the preliminary hearing on 16 December 2022.

5) I attended the hearing on 16th December 2022 with the expectation of advancing more of my claims. During this session, the Respondents secured an anonymity order for Mr X and subsequently attempted to derail the proceedings by seeking dismissal of several of my claims that had already been listed. They were able to successfully do so, despite my bewilderment at what was happening. It was most improper due to their underhand tactics at not including my full documentation in the bundle. I am genuinely confused as to why about two dozen of my claims were thrown out. This may be due to my limited understanding of legal procedures, as I do not possess a legal background or knowledge, and I have navigated the proceedings without legal representation. Financial constraints have prevented me from seeking legal advice/representation, a matter I have raised with both the Respondents and the Tribunal on multiple occasions since the proceedings commenced. Throughout this process, I have consistently found myself disadvantaged in facing my well-funded

opponents who have had extensive resources to contest this case. Repeatedly, I have expressed confusion and dismay over the dismissal of most of my claims, which has significantly undermined my overall case against the Respondents.

26. At the preliminary hearing on 16 December 2022, the Respondent advanced arguments in relation to limitation and jurisdictional issues. Employment Judge Kelly decided that some of the Claimant's claims could not proceed for the reasons she gave. It was for Employment Judge Kelly to make a decision in light of the arguments presented by the Claimant and the Respondent. The Respondent was reasonably entitled to present its arguments as to the proposed claims - raising such issues was not vexatious, abusive, disruptive or otherwise unreasonable. It appears that the Claimant is dissatisfied with the decision of Employment Judge Kelly but that does not demonstrate unreasonable conduct by the Respondent.

6) Additionally, several members of the Respondents' senior management team chose to attend this particular hearing as observers, which further exacerbated my distress and significant mental health issues. Many aspects related to the sexual assault itself and the Respondents' subsequent harassment, discrimination and victimisation of me upon my reporting the assault have been significant triggers for me, leading to further setbacks in my mental health. The Respondents have been fully aware of my mental health issues following the sexual assault. I believe this was a deliberate tactic by the Respondents to intimidate me further, knowing that I lacked legal representation and had to navigate the proceedings alone. This had been documented numerous times during these proceedings.

27. The preliminary hearing on 16 December 2022 was listed as an open preliminary hearing, therefore members of the public were entitled to attend, including the Respondent's management team. Given the extremely serious allegations made by the Claimant it was reasonable that senior managers from the Respondent attend. The Respondent's behaviour in this regard cannot be regarded as acting vexatiously, abusively, disruptively, or otherwise unreasonably. If she had concerns about feeling intimidated the Claimant should have raised them with the Judge hearing the case who could have given appropriate directions. There is no evidence that the Claimant did so.

7) The Respondents again refused to include the relevant paperwork i.e. the full text of claims and other requested information in the bundle for the preliminary hearing for the 4th and 5th May 2023. In response, I submitted a formal complaint to the Tribunal regarding this ongoing issue. As a litigant in person, it has been consistently unfair on me as the Respondents have repeatedly ignored my requests, perpetuating a significant power imbalance as I had highlighted in the summary of claims section. Judge Kelly (male), whilst sympathetic to my plight, expressed significant discomfort in overriding Judge Kelly (female)'s decision of December 2022 to dismiss several of my claims. I was assured however that the background to these

claims and my entire case would be considered at the final hearing though unfortunately, this did not occur.

28. There was a further preliminary hearing before Judge Kelly on 4 and 5 May 2023. It appears that the substantive decisions made were favourable to the Claimant because Employment Judge Kelly decided to expand the list of issues and grant the Claimant an extension of time in relation to her discrimination claims (a number of which were historic). As mentioned previously there was a dispute over whether the Claimant's 250 page document should be in the bundle as the Respondent considered it went beyond her pleaded case. The Respondent asked the Claimant to clarify which pages she wished to rely on so that these could be added to the bundle but the Claimant was not happy with this approach. On 2 May 2023, the Claimant made a complaint to the Tribunal about this matter. It was for Employment Judge Kelly to decide how to deal with this. There is no indication in the case management order that Employment Judge Kelly thought the Respondent had done anything unreasonable. This appears to us to be the type of dispute which can, and often does, reasonably arise in the course of case management hearings. As we have mentioned the Claimant had already provided her 250 page document directly to the Tribunal and she could therefore have referred to it if she wished. Furthermore we have already mentioned our view that the Respondent was reasonably entitled to object to the 250 page document on the ground that it went beyond the Claimant's pleaded case. In these circumstances we consider that the Respondent did not act vexatiously, abusively, disruptively, or otherwise unreasonably in preparing for the preliminary hearing on 4 and 5 May 2023.

    8) At the same hearing, the Respondents attempted to secure strike-out and deposit orders on several of my remaining claims, including disability, unpaid annual leave and wages owed to me. Had they succeeded, I would have been deprived of these rightful payments, which the Respondents now acknowledge were owed to me.

29. We do not have any record of EJ Kelly making a decision on applications for strike out/deposit order at the hearing on 4 and 5 May 2023. We are therefore not in a position to understand the scope of any applications that were made. If such applications were made and considered then they must have been refused. In any event we are of the view that the Respondent was reasonably entitled to present arguments as to strike out and/ or deposit orders and it was for the Judge hearing the preliminary hearing to decide what to do about them. There is nothing in the Judge's order that suggests that the Respondent's approach should be considered unreasonable. The end result of this litigation has been that only one disputed claim succeeded, and two relatively minor pay claims were conceded at a late stage. In this context we see nothing unreasonable about the Respondent's approach at the case management stage. The concession on the pay claims was to the Claimant's advantage because it meant we did not have to hear evidence/argument about them. It was a reasonable litigation decision to make the concession. Overall we consider that the Respondent cannot be

regarded as acting vexatiously, abusively, disruptively, or otherwise unreasonably in its approach.

9) The Respondents have owed me these monies since January 2021, and only recently have I begun to see any possibility of recovering them. Despite my direct follow-ups with the Respondents in March/April 2022 (see main bundle), I have endured over 3.5 years of financial hardship without receiving these owed funds and without any entitlement to interest. The potential success of the strike-out order would have further jeopardised my chances of recovering this money.

30. This ground does not appear to us to add anything to the previous ground. We reiterate our view that it was a reasonable litigation decision to make the concessions about some of the pay claims. As a result of that decision we ordered the Respondent to pay the Claimant the sums she was owed and so the concession was in her favour. We had been unable to determine the pay claims at the final hearing as everybody's focus had been on the other claims brought by the claimant, which were very extensive and serious. We felt that focus was understandable. It was then a reasonable litigation decision to concede some of the remaining pay claims. The pay claims which were not conceded did not succeed. In this context we found that the Respondent cannot be regarded as acting vexatiously, abusively, disruptively, or otherwise unreasonably in its approach.

10) The behaviour of the Respondents (legal) in each of the preliminary hearings has been hostile, inflammatory, offensive and vexatious towards myself. There seemed to be no regard to the fact that they were dealing with a vulnerable litigant in person who has endured a significant amount of trauma as a result of the sexual assault and the subsequent failures of the Respondents in dealing with the matter of that. This caused a considerable amount of distress as has been visible during the hearings.

31. There is nothing specific presented in this ground. We were not present at the preliminary hearings. There is nothing in any of the case management orders that we have seen that suggests that the Judges dealing with the case thought that the behaviour of the Respondent or it representatives had been hostile, inflammatory, offensive or vexatious. If the Claimant wished to complain about the Respondent's conduct of the preliminary hearings then the appropriate person to complain to would be the Judge hearing them. There is no evidence that the Claimant did that. We consider that if the Respondent or their representatives had been acting in the way alleged by the Claimant then it's likely this would have been dealt with and recorded by the Judges at the preliminary hearings. We therefore consider that the Respondent cannot now be regarded as acting vexatiously, abusively, disruptively, or otherwise unreasonably in the preliminary hearings.

11) It is noteworthy that Mr Bethell has been present throughout all previous hearings bar the Remedy Hearing and has witnessed the proceedings and manner in which the Respondents and representatives have conducted themselves.

32. This ground does not appear to us to add anything to the previous ground.

12) The planned ADR meeting did not proceed on its original scheduled date 3rd November 2023 as it was re-arranged for 23rd November. This however did not happen as it was postponed with no further date given. It is unclear whether this was related to the Respondents' last-minute offer of a derisory settlement amount just before the ADR was to be heard.

33. On 20 October 2023, the Respondent wrote to the Tribunal requesting an extension to exchange witness statements on the basis that the hearing bundle had not yet been finalised. This was not unreasonable as there had been a lengthy disclosure exercise and finalisation of the bundle had been delayed. Because the request for extending the deadline for exchange of witness statements would mean the statements would not be available for the ADR hearing the application also included a request for postponement of the ADR hearing. On 26 October 2023, the Employment Tribunal granted an extension for exchange of witness statements until 10 November 2023 and postponed the ADR hearing to 23 November 2023. On 22 November 2023 the Tribunal postponed the ADR hearing due to lack of judicial resources. The parties did not receive a further ADR date before the final hearing took place. The further postponement of the ADR hearing was not as a result of a settlement offer made by the Respondent. As the parties were informed at the time it was because of a lack of judicial resource and the Tribunal would not even have been aware of a settlement offer made by the Respondent. In these circumstances we find that the Respondent did not act vexatiously, abusively, disruptively, or otherwise unreasonably in relation to the ADR hearing.

13) The exchange of witness statements and additional documents was delayed significantly. After submitting mine on the court appointed deadline (20th October 2023), the Respondents then suddenly stated that they required an additional 3 weeks to prepare theirs. This was granted by the courts. Despite this extension, they missed the extended deadline and took a further week to submit their documents. At the time of submitting my witness statement, I did not have the agreed-upon bundle to reference as confirmed by Paragraph 470 of my witness statement (dated 19th October 2023):

'As of 6.43 p.m. of 19th October 2023, the final bundle is still in the hands of the Respondent's Representatives. Once that becomes available, if necessary, I will be able to cross reference the paragraphs above with the items in the bundle.'

Due to the absence of an agreed bundle, I was compelled to produce a significantly longer witness statement, as I could not cross-reference documents. The Respondents controlled the bundle, selectively including documents they deemed necessary for their case. This exercise of control resulted in a delay, granting them an unfair advantage, as they had an additional four weeks to prepare and reference their materials.

34. On 20 October 2023, the Claimant provided her witness statements to the Respondent. This was unexpected as the hearing bundle was yet to be finalised. The Tribunal granted an extension of time to exchange witness statements until 10 November 2023. On 9 November 2023, the Respondent wrote to the Claimant requesting agreement to a further week extension to exchange witness statements. The Claimant did not agree to the request. On 17 November 2023, the Respondent provided the Claimant with its witness statements. On 19 November 2023, the Claimant wrote to the Tribunal about the Respondent's conduct. The Claimant requested that the Respondent's case be dismissed as they had repeatedly missed deadlines. The Respondent objected to that proposal and put their position to the Tribunal. This included complaints that the Claimant had been unreasonable in her approach. On 20 November 2023, the Tribunal wrote to the parties confirming that the Claimant's application had been dismissed.

35. We consider that delays of this nature frequently occur in the litigation process. This was a large and complicated case (as demonstrated by the fact that the Claimant's own witness statement was 396 pages long) and the Respondent was clearly endeavouring to marshal a large amount of information and documents. At the preliminary hearing on 1 December 2023 Employment Judge Gaskell noted that by that stage all the case management orders had been complied with, albeit the Respondent had not met all the deadlines that had been set. The final hearing did not start until 29 January 2024. The case had therefore been prepared in good time, notwithstanding the missed deadlines and there was no need for EJ Gaskell to do anything with regards to the delays by the Respondent. Employment Judge Gaskell did not record anything that might suggest that he considered that the Respondent had acted unreasonably. In this context our view is that the Respondent's failures with regard to missing deadlines do not amount to them acting vexatiously, abusively, disruptively, or otherwise unreasonably. Furthermore to the extent that the Respondent missing deadlines left them in breach of the tribunal's orders we do not think that the breaches in this case were so serious as to justify a preparation time order and they do not appear to have impacted on the Claimant's preparation time. The critical point it seems to us is that as reflected in Employment Judge Gaskell's order of 1 December 2023 although there had been delays the case had still been prepared in good time for the final hearing. We would therefore not exercise our discretion to make a preparation time order.

    14) The Respondents accidentally sent me an offensive email exchange not meant for my eyes suggesting that the bundle be presented to me without opportunity for agreement. Whilst the representative did try to recall his email and apologise, he ultimately evaded addressing the core issue which was that it was unbecoming of a legal representative to try to tamper with the judicial process.

36. The Tribunal has read the relevant email. In our view it was not offensive. The Claimant was accidentally forwarded internal correspondence regarding how the Respondent's solicitors were planning on dealing with the bundle.

The email covers internal discussions on how to manage the bundle given the complexity of the disclosure task The Respondent's representative sent an email to the Claimant apologising for the error. There is no evidence of any tampering with the judicial process. This was clearly a simple mistake. The Respondent cannot be regarded as acting vexatiously, abusively, disruptively, or otherwise unreasonably in this respect.

15) Throughout the proceedings, the Respondents' lack of openness, transparency, and honesty has been evident in their withholding of several documents, claiming these were either irrelevant to my case or subject to legal privilege. This assertion is questionable, as they managed to finally produce a large cache of documents shortly before the preliminary hearing of 1st December 2023. I had to obtain a court order from Judge Gaskell compelling the Respondents to produce the information that was relevant to the case. Regrettably, they didn't produce everything requested, presumably the material then withheld would have substantially helped my case.

37. In his case management order from the hearing on 1 December 2023 Employment Jude Gaskell noted that the Claimant had made an extensive request for additional disclosure at 8 pm the previous evening (30 November 2023). Employment Judge Gaskell noted that it was the Claimant's case that this disclosure had previously been requested from the Respondent without compliance. There was no order for specific disclosure by the Tribunal, but the Respondent was ordered to deal with the Claimant's application dated 30 November 2023. The Respondent did so on 19 December 2023. We have read the Respondent's response. Some further documents were provided in response to the Claimant's requests. In respect of various other requests the Respondent refused to disclose on the basis of legal privilege and also explained there were limited documents available of the type the Claimant was seeking. These types of disclosure issues are common in litigation. There is nothing to indicate the Respondent was being unreasonable in its approach. At the final hearing the Claimant did not establish that there had been any disclosure failure by the Respondent. In these circumstances we consider that the Respondent cannot be regarded as acting vexatiously, abusively, disruptively, or otherwise unreasonably.

16) The Respondents consistently missed deadlines but faced minimal consequences as a result despite my complaining to the Tribunal on several occasions. Judge Gaskell's court order of 1st December 2023 made reference to the Respondents missing several deadlines.

38. This ground does not appear to us to add anything to the previous grounds.

17) Throughout the proceedings, the Respondents consistently denied my disability status even attempting to have it struck out, despite having evidence during my employment indicating otherwise. I have had to gather and present extensive supporting evidence, including medical documentation. On the first day of the liability hearing, they finally admitted that I have a disability, after disputing this fact throughout the whole of the preliminary proceedings.

39. The onus was on the Claimant to prove she was disabled, and she needed to provide evidence in order to do that. The Respondent was reasonably entitled to put the Claimant to proof of disability (i.e. to require evidence). This is a normal part of the litigation process and there is nothing to indicate that the Respondent was being unreasonable in its approach. The Respondent conceded disability on the first day of the final hearing. The concession was to the Claimant's advantage because it meant we did not have to hear evidence/argument about disability. It was a reasonable litigation decision to make the concession. The relevant further context is that the Claimant's claims of disability discrimination were all unsuccessful. In these circumstances we consider that the Respondent cannot be regarded as acting vexatiously, abusively, disruptively, or otherwise unreasonably in its approach.

    18) The Respondents repeatedly refused to provide key witnesses, even though their testimony could have significantly bolstered my case, particularly regarding the instances of racism and procedural failures experienced by myself. As stated in my email to the Tribunal (30th November 2023) and in my witness statement for the Remedy Hearing, I am deeply troubled by the Respondents refusal to produce Ms Karen Lightfoot as a witness despite my repeated requests as she had been present during key meetings throughout my case and has been mentioned very many times in the proceedings. The Respondents had suggested that as to various statements and information that I required, that these items could be dealt with during cross examination. However, they did not produce Ms Lightfoot at the final hearing, leaving a sizeable and important gap in the evidence presented by the other side. I know that her testimony would have corroborated the many inappropriate and racially offensive remarks made by Ms Linda Hallam to me during the course of meetings. Her testimony would have also highlighted the untruths being told by the Respondent witnesses and also shed light on the incomplete meeting notes produced. The Respondents also failed to produce Mr Jon Rouse, and Ms Rachel Dodd as witnesses, despite two of my claims directly involving them and Ms Dodd being present as an observer throughout the whole of the final hearing. Their and Ms Lightfoot's testimony was crucial for establishing critical aspects of the claims in my case. This refusal deprived me of essential evidence that could have substantiated my claims and balanced the proceedings, further exacerbating the unfair disadvantage I faced against the heavily financed Respondents.

40. The Respondent was reasonably entitled to call the witnesses that it considered relevant for its defence of the claim. The Claimant was entitled to call witnesses in support of her allegations. The Respondent is not under an obligation to call witnesses at the Claimant's request or witnesses that would support the Claimant. Failing to do so is not unreasonable. If the Claimant considered a witness could support her claim then the onus was on her to call that witness. The Claimant could have applied for witness orders in order to secure attendance. As far as we are aware she did not do so. The

Respondent cannot be regarded as vexatious, abusive, disruptive, or otherwise unreasonable in its approach to calling witnesses.

19) Anonymisation of the final hearing bundle: I spent significant time highlighting and correcting omissions and details requiring redaction/anonymisation as per the Anonymity Orders in place. Despite my efforts, the Respondents repeatedly failed to carry out the necessary corrections. This oversight wasted considerable time and required me to spend additional time on the first day of the final hearing (29th January 2024) which should have been a reading day, highlighting and correcting these errors for the Respondents.

41. On 3 August 2022 Employment Judge Harding made an order that any identifying matter which is likely to lead members of the public to identify the Claimant shall be omitted or deleted from any document forming part of the public record. The Respondent was ordered to prepare the final hearing bundle, and therefore they had the responsibility for redacting the bundle in accordance with Employment Judge Harding's order. This is demonstrated by an email the Respondent's solicitor sent the Claimant on 19 December 2023 following some pages being added to the bundle. The solicitor said: *"I will arrange for the necessary redactions on account of the anonymity orders and provide you with a copy of the updated bundle".*

42. On the first day of the final hearing (29 January 2024) the Claimant raised concerns that the Respondent had failed to comply with the anonymity order as although some parts of the bundle had been redacted there was still information in there which could lead to her being identified. We directed that during our reading time the Claimant should email the Respondent with a list of the redactions that were still required. The hearing was then adjourned while we completed our reading. At 16.57 on 29 January the Claimant sent the Respondent a list of redactions that still needed to be made. We have been able to cross reference the Claimant's list with the pages in the unredacted bundle. In our view this demonstrates that the Respondent had failed to carry out the necessary redactions. In particular the Respondent had repeatedly failed to redact: the Claimant's personal email address, the Claimant's mobile number, the Claimant's work landline, the Claimant's date of birth and the Claimant's initials.

43. We accept the Claimant's point that she had repeatedly tried to ensure that the Respondent redacted the bundle properly as it was very important to her that her anonymity was maintained. We also accept that the Claimant had to spend a significant amount of time providing the list of outstanding redactions on 29 January 2024. This was solely caused by the Respondent's failure to properly redact the bundle. We consider that the Respondent's failure to properly redact the bundle was unreasonable. The Respondent's failure to carry out necessary redactions was also in contravention of the Tribunal's order.

44. We consider it is appropriate to exercise our discretion to make a preparation time order in respect of this conduct. The Claimant was

distracted and upset by this issue and had to spend time dealing with at a time when she should have been focusing on the difficult final hearing which she was about to embark upon. The Respondent failed to make the necessary redactions despite the Claimant raising the issue. The failure meant that the Claimant felt at risk of her anonymity being compromised and it was clear that this distressed her.

45. We consider it is appropriate to make a preparation time order in respect of 4 hours work. We note that the Claimant had to (as she explained in her email to the Respondent on 29 January) manually go through the 1702 page bundle in order to identify the outstanding redactions. There was a 3 page list of outstanding redactions in the email. The email with the list of outstanding redactions was sent to the Respondent just before 5 pm. We think the Claimant had around 6 hours to prepare it following the adjournment of the hearing. We should subtract some time for lunch and also for the fact that not all of the redactions were necessary in accordance with the order (i.e. those relating to the Claimant's GP address and reference numbers which we don't think would be likely to lead a member of the public to identify the Claimant). Taking all these matters into account we consider that 4 hours is the appropriate amount of time for the preparation time order. This was not time spent at the final hearing. It was time spent outside the final hearing working on documents.

20) Additionally, I have personally anonymised several documents to assist the Respondents in saving time and effort, and to ensure the job is done accurately. Due to lacking access to the tools used by the Respondents for this task, I have had to perform these anonymisations manually, a lengthy business.

46. It was reasonable for the Claimant to undertake some redactions herself, and she was not required to do so by the Respondent. We saw this as a collaborative approach which would be in accordance with the overriding objective. The Respondent cannot be regarded as acting vexatiously, abusively, disruptively, or otherwise unreasonably in this respect.

21) Upon receiving the hard copies of the final hearing court bundle, I was dismayed to find that the box they arrived in was already open. It was evident that the package had not been secured appropriately, compromising the integrity of its contents. The court bundles inside contained sensitive and confidential information, and the lack of adequate sealing and protection raised serious concerns about the potential for these materials to have fallen into the wrong hands. This oversight demonstrates a significant lapse in care and diligence in handling and transporting critical legal documents, thereby posing a risk to the privacy and security of the involved parties. I promptly emailed the Respondents with photographs of the improperly secured package, but unfortunately, I received no response.

47. The Respondent sent the Claimant hard copy bundles. There is no suggestion that the bundles were inappropriately accessed. Even accepting the Claimant's point that there had been an "oversight" regarding the sealing

of the box in our view the Respondent cannot be regarded as acting vexatiously, abusively, disruptively, or otherwise unreasonably regarding the packaging of the hard copy bundles sent to the Claimant. At most this was an administrative mistake in not sealing a box as well as it could have been. It was not unreasonable conduct which could justify the making of a preparation time order.

22) Lying on oath/affirmation by the Respondent witnesses: Several of the Respondents witnesses were overcome by a strange amnesia during their testimony.

48. This an unspecific allegation. The Tribunal did not make a finding to this effect. The Tribunal was required to consider allegations going back many years and so it is unsurprising that some matters could not be remembered. The Tribunal preferred the Claimant's evidence on some issues but this is a normal part of the litigation process. The Respondent cannot be regarded as vexatious, abusive, disruptive, or otherwise unreasonable in its approach to the witness evidence.

23) The Respondents' failure to allow me to provide non-medical supporting evidence led me to contact the Tribunal for clarification. The Tribunal confirmed that I would be able to provide this evidence.

49. It was the Claimant's choice as to what evidence she wanted to rely on. It is not the Respondent's role to provide the Claimant with legal advice. The Respondent responded to the Claimant's request for disclosure documents and her requests to include documentation on which she intended to rely upon in the bundle. The Claimant was able to rely on the evidence that she wanted to as the Tribunal assured her she would. The Respondent cannot be regarded as vexatious, abusive, disruptive, or otherwise unreasonable in this respect.

24) Failure of Respondents to notify or inform me about witness attendance at the Remedy Hearing: The Respondents failed to notify or inform me about the necessity of calling upon witnesses who provided supporting evidence for the Remedy Hearing. They did not communicate that I could consider bringing an independent medical expert as a witness. During my telephone conversation with Mr Maz Dannourah, the Respondent's representative, on 24th June 2024, he did not mention the need for witnesses, even though the conversation was about key evidence that I had provided for the bundle and that which should be made available for the Remedy Hearing, As a litigant in person with limited financial resources, I have had to represent myself without legal advice or representation. I understood that a court-appointed medical professional would be present on the remedy hearing panel to review my medical evidence, as is typical in other Tribunals, such as DWP hearings. It was only during my conversation with Mr Dannourah that I learned the panel at the Remedy Hearing would be the same as at the liability hearing. The Respondents' legal representatives have a duty of fair play, especially since it has been repeatedly communicated to them and the Tribunal that I cannot afford legal representation. Despite this, the

Respondents purposefully withheld crucial information, undermining my ability to call witnesses, which likely affected the damages awarded to me. Their lack of transparency and communication led to an unfair process where the sexual trauma I experienced, which led to my having a breakdown in April 2020 and subsequent mental health and health issues, was not fully understood or considered, resulting in a significantly reduced award to myself. Had the Respondents communicated openly and transparently, I could have tried to make the appropriate arrangements for the relevant witnesses including a medical expert to attend, leading to a fairer hearing.

50. It is not the Respondent's role to provide the Claimant with legal or litigation advice. It was the Claimant's own responsibility to provide the evidence and witnesses that she wanted to rely on for the remedy hearing. If the Claimant wanted to rely on further witnesses or medical evidence it was up to her to make an application to do so. As far as we were aware the Claimant provided all the evidence that she wished to rely on at the remedy hearing – she did not suggest otherwise during the hearing. There is nothing in this ground to indicate that the Respondent was vexatious, abusive, disruptive, or otherwise unreasonable in its approach to the remedy hearing. It may also be worth observing that the compensation obtained by the Claimant was high considering this was an incident of discrimination with no financial loss. It is difficulty to see how the Claimant could realistically have done much better at the remedy stage.

25) Failure of Respondents to include key documentation in the Remedy Hearing bundle: The Respondents failed to include key documentation in the Remedy Hearing bundle despite receiving it by the imposed deadline. When I responded to the Tribunal's email confirming readiness for the hearing and noting the absence of these documents, the Respondents expressed disappointment that I had not contacted them earlier about this issue. I explained that their email had mistakenly landed in my junk folder, which I had no reason to anticipate, and it was only following the Tribunal email that I realised this. However, their response does not alter the fact that they omitted three crucial pieces of evidence provided to them within the stipulated timeframe.

51. The remedy bundle was agreed and all the evidence the Claimant had requested was put before the Tribunal. The Respondent collated the remedy bundle and sent it to the Claimant on 3 June 2024 for her comments. The Claimant requested that 3 further documents to be added to the bundle. The Respondent added the 3 documents to the bundle before finalising the remedy hearing bundle. It was our understanding at the hearing that all the documents that the Claimant wanted to rely upon at the remedy hearing were in the bundle. The Claimant did not suggest otherwise. We do not consider that the Respondent acted vexatiously, abusively, disruptively, or otherwise unreasonably in preparing the remedy bundle.

26) Failure of Respondents to redact personal information in Remedy Hearing bundle: The Respondents failed to redact all identifying information

in the Remedy Hearing bundle, including my personal mobile number and initials. Despite raising this issue with Judge Meichen, who suggested it could be addressed upon any outside request for the bundle, this does not alleviate my stress or concerns. The presence of my personal contact details, amidst hundreds of pages of personal, sensitive, and confidential medical information, is deeply troubling. It is unacceptable that the Respondents did not exercise the necessary care and attention required to redact this information as there is an Anonymity Order in place to protect my identity. It is worth noting that I took the initiative to manually redact and anonymise the extensive documentation I provided (approximately 350 pages), demonstrating that such a task was feasible and should have been prioritised by the Respondents. This oversight has caused me significant annoyance, distress and undermines the confidentiality of sensitive information crucial to my case. I urge the Tribunal to address this matter promptly to ensure that appropriate measures are taken to safeguard my privacy and maintain the integrity of the proceedings. This has not a one-off instance as can be evidenced in points 19 & 20.

52. At the outset of the remedy hearing the Claimant raised concerns that the remedy hearing bundle had not been appropriately redacted. The Claimant, on her own initiative, had provided already redacted documents to the Respondent for the purposes of the remedy hearing and these were in the bundle. It was the Respondent's understanding therefore that the documents had been properly redacted by the Claimant. We were conscious that when this issue had been raised at the liability hearing the Claimant had spent time identifying the missing redactions so that they could be corrected. We did not have time to go through that process again and had we done so it would probably have meant the remedy hearing would have to be postponed. We therefore decided to take a pragmatic approach. Noting that there were no observers present at the remedy hearing, and none had been present at the liability hearing either, we directed that we would deal with the matter of further redactions if and when documents were requested by an external party. No such request has ever been received[1]. Therefore the Claimant did not have to spend any extra time dealing with missing redactions. Furthermore, the Claimant has not provided us with a list of redactions which she says the Respondent unreasonably failed to make. It is unclear when this was first raised with the Respondent. In these circumstances we cannot say that the Respondent was vexatious, abusive, disruptive, or otherwise unreasonable in its approach to the redaction of the remedy bundle. We also cannot say that the Respondent was in breach of the Tribunal's order. Furthermore we do not consider that the matter had any impact on the Claimant's preparation time because unlike at the liability hearing she was not required to deal with it. Instead, the tribunal took a more pragmatic approach which meant the remedy hearing could progress smoothly. In these circumstances we would not exercise our discretion to make a preparation time order.

[1] It is now very unlikely that there will be any request for the bundle from an external party. However the Employment Judge has reminded the Tribunal staff that if such a request is received it should be referred to the Judge to consider further redactions of the bundle before it is released. We mention this to try and put the Claimant's mind at ease.

Conclusion

53. The Respondent or its representatives acted unreasonably in conducting the proceedings because they failed to adequately redact the liability hearing bundle to take account of the anonymity order for the Claimant.

54. The unreasonable conduct caused the Claimant to spend extra time identifying the missing reactions on 29 January 2024.

55. It is appropriate to make a preparation time order in respect of the extra preparation time spent by the Claimant on 29 January 2024. This was serious unreasonable conduct as the Tribunal had ordered that the Claimant should remain anonymous and the failure to properly redact caused the Claimant to be upset and meant that she was distracted from preparing for the final hearing.

56. The amount of the preparation time order should be 4 hours. This preparation time was reasonably and necessarily incurred by the Claimant to identify the redactions which were missing because of the Respondent's unreasonable conduct.

57. The Respondent did not ask us to take account their ability to pay and in any event we consider they are easily able to pay what is a relatively modest amount.

58. In respect of the other grounds for the application we decline to make a preparation time order because:

a. The Respondent has not acted vexatiously, abusively, disruptively or otherwise unreasonably.
b. To the extent that the Respondent had been in breach of the Tribunal's orders the breaches were not so serious as to justify a preparation time order.
c. Any unreasonable conduct/breach of orders did not impact on the Claimant's preparation time.
d. Looking at the overall picture it was not appropriate to make a preparation time order in respect of the other grounds even if the Tribunal's jurisdiction had been engaged. We have set out the relevant context in our analysis above which would lead us to this conclusion.

Signed by Employment Judge Meichen

Signed on 15 January 2025