EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms I Umerah	**v**	**Dimension (UK) Ltd**

Heard at: Reading Employment Tribunal
On: 13 January 2025 (partly in person and partly by video), 14 and 15 January 2025 (by video)
Before: Employment Judge George
Members: Ms E Bristow
Ms H Edwards

Appearances
For the Claimant: Mr E Umerah, husband and lay representative
For the Respondent: Mr C Crow, counsel

JUDGMENT

1. To the extent necessary, leave is given to the claimant to amend her claim form to state the early conciliation certificate to be R205361/23/74

2. The complaint of breach of duty to make reasonable adjustments is struck out under rule 38(1)(a) Employment Tribunal Procedural Rules 2024 because it has no reasonable prospects of success.

3. The complaint of unfavourable treatment on grounds of pregnancy and maternity contrary to s.18 Equality Act 2010 is not well founded and is dismissed.

4. For the avoidance of doubt, this disposes of the entire claim

5. The claimant is to pay the respondent £9,500 in respect of legal costs.

REASONS

1. In this hearing we have the benefit of a joint file of relevant documents which was 148 pages long. Page numbers in these reasons refer to that hearing file. We heard witness evidence form the claimant and from Nadia Peters who was the witness called by the respondent. Both of those had prepared

and exchanged written witness statements in advance. They confirmed the truth of these, adopted them in evidence and were cross examined upon them.

2. The claimant had some childcare difficulties which meant that she and her husband (who was representing her) brought their two pre-school age children with them to the in person hearing at Reading Employment Tribunal. They suggested that, since Mr Umerah was representing Mrs Umerah, she need not be present in the hearing room but would remain in the waiting room with the children until she needed to give evidence. Their suggestion was that they would then swop places. This would mean that Mrs Umerah did not hear Mrs Peters' evidence or anything said about her claim in case management discussions or argument. It would mean that her representative would not hear Mrs Umerah's evidence.

3. There was a discussion between the parties and the tribunal about how to proceed. The tribunal explained their concern that this would not be a practicable or fair way to proceed because of the risk that it would disadvantage the claimant if she and/or her representative were unable to hear large parts of the hearing. Consideration was given to the absent parent observing the hearing remotely. However, it was agreed between the parties and the tribunal that it would be more practicable and there would be less disadvantage to the claimant if the in person hearing was converted to a video hearing. The parties then returned to their respective places of work or place of home and joined remotely by video. So, from 2.00 pm on Day 1 onwards the hearing was conducted by video and was fully remote.

4. Following a period of conciliation which lasted between 5 July 2023 and 31 July 2023, the claimant presented her claim form on 11 August 2023. This was defended by the respondent by an in time response and case managed by Employment Judge Gumbiti-Zimuto at a preliminary hearing that was conducted on 30 April 2024.

5. The claim arises out of the termination of the claimant's employment during her probationary period. Her employment started on 27 March 2023 and ended on 3 July 2023. She was a support worker and her place of work was Dashwood Court, where she worked for the respondent, a registered charity.

Application to strike out the disability discrimination claim

6. We heard and determined an application to strike out the reasonable adjustments complaint on day 1 before hearing any evidence. We gave our reasons for that decision to strike out orally at the time. Written reasons were requested at the end of the full merits hearing and are provided here.

7. The arguments were heard and judgment given on this application before the hearing was converted to a video hearing. Mrs Umerah (and the children) remained in the hearing room throughout this part of the hearing.

8. The respondent made an application under rule 38(1)(a) ET Procedural Rules 2024 to strike out the disability complaint on the basis that it had no

reasonable prospects of success. That complaint is found in paragraphs 13 to 18 of the List of Issues (hereafter referred to as LOI – see page 41) and is the sole disability discrimination complaint. It is that the respondent required the claimant to carry out her normal duties which included accompanying residents to social events where there was a lot of noise, that this put the claimant to a substantial disadvantage as a person with anxiety and depression because she was adversely affected by loud noise (see LOI para.14.1), and that a reasonable adjustment would have been not to require her to accompany residents to such social events. The respondent disputes that the claimant was disabled at the relevant period by reason of anxiety and depression.

9. The respondent's argument is based on the last paragraph of Mrs Umerah's witness statement, where she deals with this reasonable adjustments claim. They made the application accepting for those purposes that we should take the claimant's evidence at it's highest; we presumed that her version of events would be accepted to be accurate. In her witness statement she stated:

> "I was supposed to take the same residents to a disco party and I called my Nadia Peters a few days before the day of the event, that I wasn't fit to support them but she insisted that I go to the party that it was my job, that they are limited staff and it will cost the company more money getting an Agency to cover me. I explained to her that loud noises were affecting my mental health as I struggled with generalized anxiety disorder and depression, Nadia then said I should get a doctor's report to that effect. The day of the disco party was the day I was able to get the doctor's report, she said I had to go to the party because I got the report late. I explained to her that it was not my fault and it was a few hours before the disco party and a colleague of mine was willing to go to the disco while I covered him(Josh; a colleague) at the office. She was not having it and insisted I went to the party. I told her I wouldn't be able to work efficiently at the party considering the fact that we were supporting vulnerable people and that I would be putting the people we support at risk, that was when she allowed me to stay in the office."

10. The gist of what Mrs Umerah says in that paragraph is that she was supposed to take residents to a disco party. A few days before the event, she told Mrs Peters that she wasn't fit to go and explained that loud noises were affecting her mental health. Mrs Peters asked her to get medical evidence and, on the day of the party, she produced a GP's report. She describes some initial reluctance by Mrs Peters (to put it neutrally) and then, ultimately, Mrs Peters agreed and Josh attended the party in the claimant's stead.

11. The allegation in LOI paragraph 13 is a complaint that she was required to carry out duties including accompanying the residents to the party where there was a lot of noise. The claimant's evidence was that it relates to a single occasion. The adjustment asked for is that of not requiring her to accompany residents to the social event. In fact we can see from Mrs Umerah's witness statement that, ultimately, she wasn't required to attend the event. Her complaint is therefore more about first being required to get medical evidence and about how the conversation made her feel although the outcome was that the desired result of not having to go to the party was achieved. We record that the respondent disagrees with Mrs Umerah's account of the

conversation but we decide the question of whether there are no reasonable prospects of success on the assumption that the facts will be found as she alleges them to be.

12. The factual allegation about that conversation will need to be looked at as part of the pregnancy discrimination complaint (LOI para 1.3).

13. The power to strike out a claim on the ground that it has no reasonable prospect of success comes from rule 38(1)(a) Employment Tribunal Procedural Rules 2024. It is a power to be exercised sparingly, particularly where there are allegations of discrimination.

14. In the case of Anyanwu v South Bank University [2001] IRLR 305 HL, the House of Lords emphasised that in discrimination claims the power should only be used in the plainest and most obvious of cases. It is generally not appropriate to strike out a claim where the central facts are in dispute because discrimination cases are so fact sensitive. The same point was made by the Court of Appeal in the protected disclosure case of Ezsias v N Glamorgan NHS Trust [2007] I.C.R. 1126 CA where Maurice Kay LJ said this at paragraph 29

> "It seems to me that on any basis there is a crucial core of disputed facts in this case that is not susceptible to determination otherwise than by hearing and evaluating the evidence. It was an error of law for the employment tribunal to decide otherwise. In essence that is what Elias J held. I do not consider that he put an unwarranted gloss on the words "no reasonable prospect of success". It would only be in an exceptional case that an application to an employment tribunal will be struck out as having no reasonable prospect of success when the central facts are in dispute. An example might be where the facts sought to be established by the claimant were totally and inexplicably inconsistent with the undisputed contemporaneous documentation. The present case does not approach that level."

15. Furthermore, there is a public interest in ensuring that allegations of discrimination are heard and determined after appropriate investigation of the circumstances because of the great scourge that discrimination represents to society. The question for us – whether at a preliminary hearing or dealing with the application before the start of a final hearing - is whether the claimant has no reasonable prospect of establishing the essential elements of her claim, taking into account the burden of proof in respect of each of those elements and bearing in mind the danger of reaching such a conclusion where the full evidence has not been heard and explored.

16. That said, where it is plain that a discrimination claim has no reasonable prospects of success (interpreting that high hurdle in a way that is generous to the claimant), then the tribunal does have and, in a plain and obvious case, may use the power to strike out the claim so that the respondent and the tribunal system are not required to spend any more resources on a claim which is bound to fail. The test in rule 38(1)(a) has rightly been called a high threshold. Even though we're at the start of the final hearing we still apply the same threshold test. However, we have the benefit of the whole of the evidence which will be put forward on this issue and by presuming that the

claimant will be believed in her account, we are presuming that the central facts are not in dispute but considering whether there are any circumstances in which, on the evidence prepared for the final hearing, the claimant might succeed in her reasonable adjustments complaint.

17. We agree that there are no reasonable prospects of it succeeding as a disability discrimination complaint and that that complaint should be struck out under rule 38. These are our reasons.

18. We focus on whether there are no reasonable prospects of the claimant establishing one or more of the essential elements of her claim. It is not argued by the respondent for this application that there are no reasonable prospects of the claimant showing that she was disabled, or that she would have been put to a substantial disadvantage as a person disabled because of anxiety and depression by being required to attend this particular social function. The question is whether, on the basis of the witness statement evidence which the claimant proposes to rely on, are there no reasonable prospects of her showing that there was a requirement to do her normal duties, including attending a social function where there was lots of noise and or whether there are no reasonable prospects of us concluding – after hearing all the evidence – that there was a step which was not done which it would have been reasonable for the respondent to have to take to alleviate any disadvantage.

19. The highest that the claimant's case is put is that the adjustment was made made reluctantly, a couple of days after the claimant had requested it, when medical evidence was available and that she felt some pressure about the conversation. Nevertheless, her own evidence will be that she did not have to attend the party on any occasion after she explained that it disadvantaged her. The claim is about needing an adjustment for a one off event; it is not a complaint that it was made a few days later than it might have been. The claimant's own witness statement accepts that that adjustment was made, after medical evidence had been provided. When the timescale between initial request and adjustment granted is said to be days and she did not have to do the activity which caused the alleged disadvantage, There are no reasonable prospects of any other finding than that all reasonable adjustments were made.

20. That is why we think that the disability complaint – the reasonable adjustments complaint - has no reasonable prospects of success. We think that it is proportionate to strike out this complaint, even though the final hearing is about to start, because considering this complaint would require analysis of whether the health condition that Mrs Umerah has amounts to a disability in her case. That would involve quite a lot of potentially intrusive questioning and, when the complaint has no reasonable prospects of success, that is something which Mrs Umerah might be spared because it is not necessary for any other part of the claim. We can see from the hearing file that we do not have the medical evidence that we would usually expect to see. In particular detailed GP records are not in the hearing file. We only have Mr Umerah's statement of the of the medication that Mrs Umerah is taking. When the best evidence is not available decision making may be

problematic and the respondent argues that, on the facts of this case, that may disadvantage the claimant but may disadvantage the respondent. Furthermore – and we do not criticise anyone for this – there has been some loss of time today which means that there is now some pressure of time. There is some risk that we will not be able to determine all issues between the parties in the time available whereas there was none before. In those circumstances, it is not in the interests of justice that the tribunal should have to spend time dealing with the disability complaint which we think is bound to fail, even if the claimant's evidence is accepted on all points.

The Issues

21. As a consequence of that decision, the issues that had been clarified by Employment Judge Gumbiti-Zimuto at the preliminary hearing on 30 April 2024 which are set out at page 40, were narrowed. The tribunal did not need to make a decision on paragraphs 6 to 19 of that list of issues. This judgment is concerned with issues 1 to 5. We note that, at the time of the preliminary hearing, the claimant had not yet confirmed whether she complained of less favourable treatment on grounds of sex or unfavourable treatment on grounds of pregnancy and this probably explains the wording of those issues.

22. It was agreed before evidence began that oral evidence and argument would first cover liability issues (that is issues about whether the claimant succeeds to any extent) and then if the claimant was successful, there would be time available to consider what award of compensation would be appropriate. It was agreed that, at the first liability stage, we would also consider whether or not, if the claimant succeeds in her complaint that dismissal was an act of discrimination, the claimant would have been lawfully dismissed in any event. As a consequence of our decision on the liability issues, we do not need to consider that issue and there will be no need to consider compensation.

Findings of Fact

23. We make our findings of fact on the balance of probabilities. We take into account all of the evidence we have heard, both documentary and oral, which was admitted at the hearing. We do not set out in this judgement all of the evidence but only our principal findings of fact, those findings necessary to enable us to reach a conclusion on the remaining issues. Where it was necessary for us to resolve conflicting factual accounts we have done so by making a judgment about the credibility or otherwise of the witnesses we have heard based upon their overall consistency and the consistency of accounts given on different occasions when set against contemporaneous documents where those exist.

24. The respondent is a registered charity. The claimant was a support worker at Dashwood Court which is a supported living property. There are 7 adults living there who have mild learning disabilities and support needs as explained by Mrs Peters in her paragraphs 2 and 3. It is located in a residential area next door to other properties where members of the public live.

25. The respondent, as you would expect, has a job description for support workers and require their employees to abide by a code of conduct and adhere to a list of values (see page 45). These set out standards of behaviour. We accept that the respondent wants to be a market leader in setting standards for behaviour for the sector. The claimant accepted that she was bound by her contract to comply with published policies including the Code of Conduct which was based upon values including respect and integrity.

26. Relevant specifics include paragraph 4 on page 51, in particular the 5th bullet point which says that they require employees to,

> "maintain the highest level of courtesy and respect when dealing with colleagues both inside and outside Dimensions, the people we support, their families, members of the public and contractors".

27. We also particularly note paragraph 26 on page 59. It is headed Customer Service and reads as follows:

> "We are all expected to treat the people with whom we come into contact whether by phone, direct contact, e-mail or through correspondence, with courtesy and respect at all times.
>
> From time to time staff will have to deal with difficult customers or situations. In such circumstances the high standards of professionalism and fairness must be maintained. Rudeness is not acceptable in any circumstances.
>
> The general actions, behaviour and demeanour of staff while at work should be such as to present Dimensions as a professional and effective organisation. Any actions which might imply an unprofessional or negative attitude should be avoided at all times."

28. We note that, even when dealing with difficult customers or situations, the expectation of the respondent is that their staff should maintain "high standards of professionalism" and also that "Rudeness is not acceptable in any circumstances." This is clear and does not require any comment to be understood. It causes us to conclude that the ethos of professionalism at all times is embedded in the respondent's way of doing things.

29. The claimant's employment was subject to six months' probation. She was just over two months into that probationary period when the incident of 1 June happened. The probationary policy starts at page 94. Monthly one-to-ones are envisaged but we accept that the timing of them might be flexible depending upon availability and leave. The formal disciplinary policy does not apply during the probation period (see page 95).

30. There was an altercation on 1 June 2023 between the claimant and a member of the public who is the tenant of a property near or adjacent to Dashwood Court. There are accounts in the hearing file from both the claimant and the neighbour. We have heard oral evidence only from the claimant. It is in paragraph 2 of her statement.

31. We do not need to resolve differences between that and the neighbour's account. For reasons we explain later, we have concluded that Mrs Peters' decision was made on the basis of what the claimant said had happened in her first written account (see page 127) and in the probation review meeting (see page 135). That is why we do not need to decide whether we prefer the claimant's account to that of the neighbour.

32. The chronology of the investigation is important. A complaint was received on 2 June 2023 (see page 117 which is from the neighbour). It was forwarded by her Housing Association, Paradigm, to the respondent. Pages 114, 115 and 116 are emails which set out what Paradigm were told by the neighbour and what they relayed to the respondent. A report of what claimant told another support worker at the instant time is at pages 118 to 119.

33. The claimant argues that this member of the public was someone whom other support workers had had issues with, presumably based on what her colleague support worker relayed (page 119). However no details have been set out in evidence about actual altercations with any other members of staff and Mrs Peters was not aware of any such incidents. What is relevant is that there is no evidence that the neighbour had previously made complaints to her Housing Association which had come to the respondent's attention.

34. The claimant volunteered a version of events (page 127) on 14 June. Her husband had arrived and was waiting in the car with their daughter for her to bring something out to him. The neighbour objected to where he was waiting. The claimant does state that neighbour was an aggressor but she includes in her account this "and she told me she was going to give me a dirty slap, then I warned her that if she tries hitting me, I would beat her up."

35. Even if, as she state, the claimant was provoked by the perceived threat to her child, when she is at work, representing Dimension (UK), within earshot of neighbours of one of their services and potentially within earshot of the residents, for her to respond in the way she admitted doing, was clearly a potential breach of the expected standard of behaviour which merited investigation. Even accepting the claimant's version of events, the altercation drew the attention of another neighbour and would have the potential to reflect badly on the respondent and the professionalism of their employees.

36. As we have said, the claimant was still in her probation and she had a one-to-one meeting with Mrs Peters on 8 June.

37. There is some common ground about this meeting. It is agreed that the following things were discussed in the following order.

    a. Mrs Peters raised with Mrs Umerah the incident with the neighbour;

    b. Although the claimant denied that, in the 8 June meeting, Mrs Peters had raised her being late, she did accept that Mrs Peters had previously raised concerns about her lateness. She also denied that in the meeting Mrs Peters had raised concerns about her being late on 8 June itself. However, we accept that concerns relating to

lateness and conduct on 1 June 2023 were raised by Mrs Peters before she was told that the claimant was pregnant. This disclosure was made by the claimant later in the meeting and Mrs Peters stated that she would carry out a pregnancy risk assessment.

c. The claimant also told Mrs Peters that she had a university course starting in September.

38. The matters that are disputed about what happened in the meeting are that Mrs Peters says meeting was accurately noted in minutes at page 121 whereas Mrs Umerah disputes that. Mrs Peters also says that it was later the same day that she had a telephone conversation first with Josh and then with the claimant about who was to accompany residents to a disco.

39. In her witness statement, the claimant says that after Mrs Peters was told of pregnancy there were a series of personal, intrusive and unwanted comments. These are our findings about that allegation.

40. Mr Umerah alleged that Mrs Peters changed her oral evidence about the truth of the matters concerning family matters which she is said to have relayed to the claimant in this meeting. We reject that allegation. Her original answer was "no" in response to a composite question and her subsequent answer was to clarify that it was only part of the composite question which she denied. She did not alter her answers at all and there are no grounds to doubt her account of this meeting.

41. On the other hand, the claimant's evidence was confused and unsatisfactory in some respects:

a. Notably she alleged that she had told Mrs Peters about a visit to a cinema where the loud noise had caused her to become unwell. She said that she had called Mrs Peters a few days before the disco she was due to attend to say that she was unable to attend because of the effect on her of loud noise and referenced the cinema trip. She said that Mrs Peters had not immediately agreed that she need not go but had requested a GP note and it was only on receipt of this note that the claimant was relieved of attendance at the disco.

b. However claimant had also accepted that she had not attended the disco on 8 June having been rostered to do so. The only GP note is dated 29 June. Therefore the documentary evidence is inconsistent with the claimant's account that immediate permission to not to attend the disco on 8 June was not given. The date of the GP note is consistent with Mrs Peters' evidence that it was on 8 June that she told the claimant that didn't need to go to the disco but that if she was to need regular adjustments in the future she needed to provide advice from GP that those were necessary and then the GP note was provided three weeks later. If Mrs Umerah'[s account was accurate, the GP note would be dated 8 June or perhaps the day before.

c. The claimant accepted that another member of staff attended in her stead on 8 June. It clearly was not going to cost the respondent any more money for this to happen so it does not make sense for Mrs Peters to have said that. On any view, the change to the roster was made immediately so even if the claimant had said she needed that change because of pregnancy, those are factors that suggest the respondent would have supported her needs. As matter of fact, we are not satisfied that the need to avoid loud noises was ever explained by the claimant to be related to her pregnancy.

d. The minutes of 8 June meeting were sent to the claimant on 13 June (see page 122). The claimant did not take opportunity to say they were inaccurate although she gave evidence that she had not in fact read them until the first day of the tribunal hearing.

e. The pregnancy risk assessment is at page 123. This does not refer to an increased risk for the claimant during pregnancy of being in noisy places. The claimant signed it nonetheless. We did not find her explanation for not including that need to be credible. We think that its absence is consistent with the claimant not raising it as a risk associated with pregnancy at the time and that is consistent with the wording of the GP note. We also think it is consistent with her not being required to do those duties as matter of fact from 8 June onwards.

f. Similarly, had she needed any further adjustments, there was another opportunity to explain that in the return to work meeting with Rebeka Banks on 14 June (page 129). The claimant's explanation for not raising the alleged risk associated with pregnancy of being in places with loud noises to Rebeka was the latter's relatively junior status. We do not think this is a credible explanation and infer that she did not mention it because it was not a problem in that it was not something she was worried about happening in the future.

42. Those several matters cause us to have doubts about the claimant's reliability as a witness of fact. Where her evidence conflicts with that of Mrs Peters about the conversation on 8 June we prefer that of Mrs Peters. In particular, Mrs Peters did not ask the claimant whether she wanted to keep the pregnancy or ask whether it was planned or ask how she was going to cope with her work, pregnancy and studies. Nor did she mention her stepdaughter becoming pregnant at an early age, not being mature enough to care for herself or a child and being advised to have an abortion. Those things did not happen.

43. Our impression from the standard form for a risk assessment and the immediate reaction of Mrs Peters to set up a risk assessment is that the respondent has an efficient process for supporting pregnant employees. This kicked into place as soon as Mrs Peters was informed of the claimant's pregnancy.

44. The following is a timeline concerning the preparation of the risk assessment. It was not disputed by the claimant when she was asked about it in cross-examination and she was vague about the dates. She did ask for permission to consult her calendar but any documentary evidence she wished to rely on should have been sent to the respondent at the proper time and her calendar was not admitted into evidence:

    a. On Friday 9 June, the day after the claimant informed Mrs Peters she was pregnant, she was not in work. Mrs Peters told us that on this date, the day following the one-to-one, she typed up a draft risk assessment for discussion with the claimant.

    b. On Saturday 10 June 2023, Mrs Peters was not in work;

    c. On Sunday and Monday 11 and 12 June 2023, the claimant was absent through illness according to the dates on the return to work form.

    d. On 13 June 2023 the pregnancy risk assessment was signed off with the claimant. No changes appear to have been requested (pages 123 to 126).

    e. On 14 June 2023, there was a return to work meeting following the two days absence which were pregnancy related and a questionnaire was completed by Rebeka Banks (page129 - 131).

45. We find that the risk assessment did not omit anything important. Had it done so, there was no reason why the claimant could not have raised it before signing the document.

46. Mrs Peters prepared a fact-finding report about the 1 June incident (page 132). The claimant alleges that this was not a balanced or fair report for the following reasons:

    a. The report acknowledged that Paradigm were closing the complaint and had received video footage from the neighbour's doorbell from the start and end of the altercation but not from the middle. On the contrary, accepting that the third party complaint was not proceeding shows balance.

    b. No contact was made with the police to find out about the report; and

    c. It was also argued that it could not reasonably be said that Mr Umerah was parked because he did not get out of the car and was only waiting.

47. The claimant was sent (page 135) a copy of the invite letter and the fact-find and other documents. She was warned that a possible outcome of the probation review meeting would be termination of her employment. It was rearranged once and eventually took place on 3 July 2023.

48. The outcome of the probation review meeting was that Mrs Umerah's probation was terminated and her employment came to an end. The decision was notified after a break by Mrs Peters and by Ms Oliver, who was present from HR. The rationale as it was explained in the meeting is set out in the last 3 paragraphs of the notes of the hearing on page 142. Mrs Peters said:

> "We've had a discussion, there are some concerns around using aggressive behaviour, you had a couple of opportunities to leave, your conduct could be damaging for Dimensions' representation. You said you don't think people the support didn't see or hear you, we can't guarantee this, the carpark is very overlooked. You have failed to complete your probation period due to gross misconduct and using threatening behaviour."

49. Ms Oliver is then recorded as noting:

> "The concerns we had are that we acknowledge there is an altercation, you explained how it began. The treats [which we think is probably threats] to beat the person up. You said you don't believe the people we support heard but knowing the disagreement is going on, it poorly represents Dimensions. was aware you were in a working environment, hence why she made a complaint, and it reached us. As an organisation the damage to us and threats are concerning. You'll be entitled to 1 week pay in lieu, won't be working it but will be paid for it in July pay. you have the right to appeal."

50. So far as we have been told, the claimant did not appeal.

51. The concerns of Mrs Peters in reaching the conclusion that the claimant's employment should be terminated were that she had used aggressive behaviour, had had couple of opportunities to leave and had not done so and that there was, potentially, damage to the respondent's reputation. She was also concerned that the residents might have seen what was happening.

52. Ms Oliver's concerns were about the claimant's threats to beat up the neighbour and that the wider knowledge that disagreement had happened had reflected poorly on the respondent. All of those conclusions are totally valid even accepting the claimant's account of the incident. We note that claimant does not accuse Ms Oliver of having a discriminatory attitude or motivation and Ms Oliver shared the concerns of Mrs Peters.

53. This reasoning expressed at the time is consistent with Mrs Peters' witness statement evidence in paragraphs 11 and 12. We find that Mrs Peters accepted the claimant's version of events and still thought she should be dismissed. Questions about whether the Mr Umerah's car was parked, or whether the altercation lasted for 5 mins or 10 minutes are immaterial. However, as it happens, it was the claimant's account that the incident lasted 10 minutes and, in those circumstances, Mrs Peters had ample evidence to conclude that the claimant had opportunities to walk away. The language the claimant described using when gave an account in the probationary review meeting included additional instances of aggression by her compared with her first account.

54. The claimant argues that, as a mother defending her child, her behaviour was understandable. She argues that more could have been done to obtain CCTV footage. This bring us to a point that Mr Crow made in argument. We are not concerned with an unfair dismissal claim. It is not a question of whether other employers might have accepted the defence of maternal instinct as grounds to think the behaviour might not be repeated or that a lesser sanction was appropriate. It is not a question about whether other employers might have investigated further. We are concerned with finding what was the effective cause of Mrs Peters' decision that the claimant had failed her probation and that the probation should be ended and, with it, the employment. There is ample evidence that it was entirely because of the claimant's conduct and nothing to do with pregnancy, which Mrs Peters had not found out about until after she raised her concerns about the neighbour's compliant with the claimant.

55. The argument that the fact-find was not balanced is not one we give weight to be cause the claimant's own account was the basis of the decision.

Law applicable to the liability issues in dispute

56. The claimant alleges that she has suffered pregnancy discrimination under s.18 Equality Act 2010 (hereafter the EQA), which, so far as relevant, provides that:

> "A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably –
>
> a. because of the pregnancy, or
> b. because of illness suffered by her as a result of it."

57. The protected period begins when the pregnancy beings and ends at the end of the additional maternity leave (if the woman is entitled to that) or if she is not, at the end of two weeks beginning with the end of the pregnancy. Section 18 also prohibits unfavourable treatment because a woman has exercised or is exercising or seeking to exercise the right to maternity leave. Direct pregnancy and maternity discrimination are mutually exclusive with direct sex discrimination and that is made clear in s.18(7) EQA. Mrs Umerah has clarified that she does not bring a claim of direct sex discrimination.

58. The correct approach to a pregnancy/maternity discrimination claim is to focus on why the claimant has been treated in the way that they have. If the reasons for the treatment include that of pregnancy, then there is no need to consider whether a man would have been treated more favourably. Section 18 does not require a comparator because there is no comparable situation to pregnancy. The claimant has to show that she was treated unfavourably and that a reason or effective cause of the treatment was pregnancy or maternity. Mr Crow refers to a number of cases, O'Neill v Governors of St Thomas More Catholic VA Upper School [1996] IRLR 372, The Chief Constable of Hampshire Constabulary v Haque [2012] EqLR 113, and Interserve FM v Tuliekyte [2017] IRLR 615, EAT all of which make the point

that it is insufficient for the pregnancy to be part of the factual context to the treatment complained of; it must be an effective cause of that treatment.

59. The burden of proof provisions of s.136 EQA apply here as to the other complaints under that Act. They require us to consider whether the clamant has shown facts from which it could in the absence of any other explanation be inferred that the effective cause, the reason for the treatment, was pregnancy. If so, then the burden transfers to the respondent to provide cogent evidence that the reason was not that of pregnancy. Where the tribunal is in a position to make positive findings on the evidence one way or the other, the burden of proof provisions are unlikely to have a bearing upon the outcome however. In effect, the basis for doing so would be that the tribunal had assumed that the claimant had passed the first stage of the test in Igen Ltd v Wong [2005] ICR 931 CA (see the explanation in the judgment of HHJ James Tayler in Field v Steve Pye & Co (KL) Ltd [2022] EAT 68; [2022] IRLR 948 EAT).

Conclusions on the Issues

60. We now set out our conclusions on the remaining issues, applying the law as we have just described to the facts that we have found. We do not repeat all of the facts here, since that would add unnecessarily to the length of the judgment, but we have them all in mind in reaching those conclusions.

61. We return to the list of issues (or LOI) on page 40.

62. The first paragraph, LOI para.1, asks whether the alleged treatment occurred. The respondent accepts that Mrs Peters dismissed the claimant and that deals with LOI para.1.1.

63. We have made the following findings about the other alleged acts of the respondent:

    57.1 The risk assessment at LOI para.1.2 was carried out in good time. Insofar as it necessary for us to make this finding, we find that nothing material was omitted from it; There was no unfavourable treatment of the claimant as alleged because the risk assessment was carried out in a timely fashion.

    57.2 The claimant was not required to take a resident to a disco at any time from 8 June 2023 onwards and that was the date on which she informed the respondent that she was pregnant. So the alleged treatment in LOI para.1.3 did not occur. The claimant was not required to carry out tasks that she was unable to do due to her pregnancy.

    57.3 LOI para.1.4 alleges that Mrs Peters insisted that the claimant provide a medical report from her GP. The claimant was asked to provide a GP note that she had medical needs to avoid loud places. The request was made, so the factual basis of LOI para.1.4 is made out to that extent. However, this would not be unfavourable treatment in any event because it was necessary to support her and to progress her

request for altered duties. The request was not made on the basis that it was necessary because of her pregnancy in any event. However, in principle, a request to provide necessary GP evidence before agreeing to adjusted duties on a permanent or indefinite basis does not seem to us to be unfavourable treatment; it is not something which the reasonable employee would regard themselves as disadvantaged by.

64. The issues that are set out in LOI paras.2, 3 and 4 are not relevant questions now that it is understood that the complaint is only under s.18. At the time the list was set up the claimant had not clarified whether she argued it was in fact less favourable treatment on grounds of sex and so those issues which involved discussion of less favourable treatment and the identity of a comparator falls away. No comparator is appropriate because there is no comparable situation to pregnancy.

65. The final question is whether the grounds for any treatment which is admitted or which we have found to have been done was that of pregnancy. We have made positive findings that the entire reason why Mrs Peters decided to dismiss the claimant was her conduct on 1 June 2023. The claimant had admitted using aggressive language; she threatened to beat up the neighbour who lived in a house near the supported living facility and also called that neighbour a bitch. She admitted that she was involved in an altercation which had lasted 10 minutes and Mrs Peters reasonably concluded the claimant had opportunities to disengage from that altercation. Her conduct risked bringing the respondent into disrepute and the altercation risked coming to the attention of the service users on site. Those were genuine conclusions that Mrs Peters reached on the evidence in front of her and they had nothing to do with pregnancy.

66. The entire reason that Mrs Peters requested that the claimant should provide a GP note was to provide evidence of the medical need for adjusted duties. We have found that that was not unfavourable treatment but, if we are wrong about that, there was a policy that for long term adjustments the respondent would need medical evidence although they could put short term adjustments in place in the interim. Mrs Peters put those adjustments in place immediately and her quick reaction causes us to accept that she was following a sensible, flexible and established policy. This did not cause any additional cost to the respondent but it was a requirement that the respondent should have medical evidence if, in the longer term, colleagues were going to have to carry out those of the duties which claimant said she was unable to do on medical grounds. Even if we are wrong and it was unfavourable treatment there is cogent evidence that the reason for the request had nothing to do with pregnancy.

67. In both cases, these positive findings, made on the presumption that the respondent had to provide cogent evidence of their reasons for acting as they did, preclude a finding that the treatment was on grounds of pregnancy and the remaining complaint fails.

68. Our judgment therefore deals with all outstanding complaints and the claim is dismissed.

Costs application

69. The power to order that one party pay the legal costs of the other is found in rule 74 Employment Tribunal Procedural Rules 2024 (hereafter referred to as the 2024 Rules). So far as is relevant, rule 74 reads as follows:

> "(2) A 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) or the way that the proceedings (or part) have been conducted; or
>
> (b) any claim or response had no reasonable prospect of success; or"

70. By rule 76 (1), the Tribunal may order the paying party to pay a specified amount not exceeding £20,000 or the whole or a specified part of the costs of the receiving party, to be determined by way of detailed assessment.

71. There are therefore three stages to determining a costs application. First the tribunal must consider whether the grounds for making a costs order in rule 74(2) exist and secondly, if they do, then the tribunal must consider whether or not to make one. Finally, the tribunal must decide what amount to order.

72. When deciding whether or not the litigant's conduct of the proceedings has been unreasonable, the words of the rule are the starting point, remembering that, in the Employment Tribunal, a costs award is the exception, rather than the rule. As Mummery LJ said in Barnsley MBC v Yerrakalva [2012] I.R.L.R. 78 CA at para.41,

> "The vital point in exercising the discretion to order costs is to look at the whole picture of what happened in the case and to ask whether there has been unreasonable conduct by the claimant in bringing and conducting the case and, in doing so, to identify the conduct, what was unreasonable about it and what effects it had. The main thrust of the passages cited above [from Mummery LJ's judgment in McPherson v BNP Paribas [2004] EWCA Civ 586] was to reject as erroneous the submission to the court that, in deciding whether to make a costs order, the ET had to determine whether or not there was a precise causal link between the unreasonable conduct in question and the specific costs being claimed. In rejecting that submission I had no intention of giving birth to erroneous notions, such as that causation was irrelevant or that the circumstances had to be separated into sections and each section to be analysed separately so as to lose sight of the totality of the relevant circumstances."

73. Further guidance about the correct approach to whether a litigant in person has acted vexatiously, abusively, disruptively or otherwise unreasonably in the conduct of the litigation is found in AQ plc v Holden [2012] IRLR 648 paragraphs 32 & 33:

> "The threshold tests in [*what is now rule 74(2)*] are the same whether a litigant is or is not professionally represented. The application of those tests may, however, must take into account whether a litigant is professionally represented. A tribunal cannot and should not judge a litigant in person by the standards of a professional representative. Lay people are entitled to represent themselves in tribunals; and, since legal aid is not available and they will not usually recover costs if they are successful, it is inevitable that many lay people will represent themselves. Justice requires that tribunals do not apply professional standards to lay people, who may be involved in legal proceedings for the only time in their life. As Mr Davies submitted, lay people are likely to lack the objectivity and knowledge of law and practice brought by a professional legal adviser. Tribunals must bear this in mind when assessing the threshold tests in [*what is now rule 74(2)].* Further, even if the threshold tests for an order for costs are met, the tribunal has discretion whether to make an order. This discretion will be exercised having regard to all the circumstances. It is not irrelevant that a lay person may have brought proceedings with little or no access to specialist help and advice.
>
> 33
>
> This is not to say that lay people are immune from orders for costs: far from it, as the cases make clear. Some litigants in person are found to have behaved vexatiously or unreasonably even when proper allowance is made for their inexperience and lack of objectivity. But the tribunal was entitled to take into account that Mr Holden represented himself; we see no error in its doing so; and we do not accept that it misdirected itself in any way."

74. A similar point is made in one of the cases cited by Mr Crow, Npower Yorkshire Ltd v Daly (UKEAT/0842/04). It was stated by the EAT in that case that the mere fact that the claimant genuinely believed that they had a complaint does not advance the question of whether costs should be awarded. The question was what the claimant knew or ought reasonably to have known about the weaknesses of their case: see also para.14(6) of Vaughan v Lewisham LBC (UKEAT/0533/12). Vaughan is also authority for the proposition that the failure by the receiving party to seek a deposit order or to apply to strike out the claim is not cogent evidence that the claims had reasonable prospects of success. Whether or not it is relevant to the exercise of discretion to award costs is to be judged in the circumstances of the case.

75. In deciding whether or not to make a costs order, and if so, in what amount, the tribunal may have regard to the paying party's ability to pay: rule 82 of the 2024 Rules. The tribunal has an open discretion whether or not to take means into account but if it declines to do so, having been asked to consider the paying party's financial circumstances, it should explain its decision: Herry v Dudley MBC [2017] I.C.R. 610 EAT.

76. If the tribunal does decide to take means into account, then – depending upon the facts found by them – they may make an award of costs against a claimant who on the evidence is unable to pay those costs where there is a realistic prospect that they may at some point in the future be able to afford to pay them: Vaughan paras: 28 & 29.

77. We delivered our oral judgment on liability dismissing the claims starting at about 11.00 am. After we had finished, Mr Crow indicated that the respondent was making an oral application for the claimant to pay the whole of the respondent's costs. The claimant had been put on notice of the respondent's intention, if successful in their defence, to make such and application. She had been informed the previous day that she might wish to prepare some evidence of means, should she wish to ask the tribunal to take that into account when deciding whether or not to make such an order and, if so, in what sum.

78. We were provided with 2 costs warning letters from the respondent to the claimant which are detailed below. We were also given copies of an exchange of emails between the parties the previous day in which the respondent's representative had set out various charges to the respondent's account arising out of defence of this claim. Mr Umerah provided 5 emails with some information about his wife's financial situation – principally the last 3 months' bank statements. The respondent was keen, given the time available, for the costs application to be heard and determined without further cost to them. We were satisfied that the claimant had had sufficient notice of the basis on which the application would be made, of the amount claimed and of the need to provide evidence of means should she wish to do so. We considered it to be in accordance with the overriding objective to proceed to hear the application in those circumstances. We gave time for the documents to be provided and to enable us to read them.

79. The basis of the application was that the claimant had acted unreasonably in bringing and maintaining a claim which she knew or ought to have known lacked reasonable prospects, in particular after the costs warning letters.

80. We have found that the complaint of breach of duty to make reasonable adjustments had no reasonable prospects of success on the basis that the claimant's own evidence was that the requested adjustment was made within days of it being requested. Ultimately we found that the adjustment to her duties was in fact made on the same day that it was first requested – albeit on a temporary basis until medical evidence to support the application was provided.

81. The respondent argues that the pregnancy discrimination complaint had no reasonable prospect of success. There were four specific acts alleged to be pregnancy discrimination. However, in our view, the reason the claim has been brought is that she was dismissed.

82. The claimant argued there were things which meant that she reasonably thought her pregnancy dismissal claim had merit. She pointed to alleged unexplained inadequate investigation and her request to be relieved from attending the disco. She claimed that had caused unhappiness on part of the respondent so they used the opportunity to dismiss her for the incident with the neighbour. She also relied during the hearing upon comments she said had been made by Mrs Peters, which evidence we have rejected. Mr Umerah

emphasised that both he and his wife had genuinely believed in the justice of their complaints.

83. That may be, however the sensible claimant should evaluate and re-evaluate their claim before putting the other party and the tribunal to unnecessary costs. We need to decide whether this claim was unmeritorious from the start and should Mrs Umerah have realised that? If so, from when?

84. We take care when looking back with hindsight with knowledge of the findings we've made about what exactly was said on 8 June 2023 and the details of the claimant's request to be relieved from certain duties. We are of the view that, with the knowledge she had at the outset of the claim, it was not unreasonable for a litigant in person to consider that the claim had better than no reasonable prospects of success. The actual claim wasn't very clear as originally set out. Unless one knows more clearly what the claim is and have explained the steps in proving a claim (for example through the List of Issues) it is difficult to assess whether the complaint is legally reasonable or not. We accept that the claimant has a genuine - if ultimately misguided - sense of grievance.

85. However, there were points where the weakness of the claim and particular complaints should have become apparent even to a litigant in person. We accept that we should not judge the claimant (or her husband) by the standards of a professional representative but the reasonable litigant would reassess their prospects of success from time to time. For example, the reasonable litigant would read the correspondence from the other party and read and taken on board the evidence which they know will be available to the tribunal from both sides. They should not go on hoping something will turn up when that is contrary to the evidence and all logic. Litigation involves considerable commitment of valuable time by both parties and the tribunal. It is not reasonable and may be unreasonable to initiate or continue with proceedings if the prospects of success are so marginal that the cost of continuing is out of all proportion to the likelihood of success.

86. Some of the allegations in the List of Issues are clearly not supported by the claimant's own account. Even if you give the claimant the benefit of the doubt prior to the preliminary hearing at which the questions for the employment tribunal were finalised, from that point the responsibility not to conduct her litigation unreasonably should have involved a recognition of that reality. For example, where she alleges that the pregnancy risk assessment was not completed in good time that was simply not going to be accepted by the tribunal given that it was completed on the next working day that both she and her line manager were in work. The complaint that she was required to do tasks which she couldn't do because she was pregnant was contrary to what was in her own witness statement. That was the allegation that she was required to take residents to a disco party and her own evidence was that the duty was carried out by another.

87. There is then the main complaint of dismissal and here the costs warnings letters are particularly relevant. They are, taking account our experience of

similar letters, very well worded and attempt with care and in a measured way to explain why the respondent is confident of success. With the first, dated 13 December 2023, the respondent voluntarily disclosed the key relevant documents: the risk assessment, the return to work meeting minutes, the probationary review meeting notes, the notes of the 1-to-1 of 8 June 2023 and the dismissal letter. This should have caused the claimant or any reasonable litigant in person to realise that the contemporaneous documents were likely to support the respondent's case. She did not have any documentary evidence to contradict important matters such as the fact that Mrs Peters raised the complaint about her conduct before she was told of Mrs Umerah's pregnancy.

88. We do give some leeway for a litigant who is unfamiliar with what is expected of them and what will be expected at a final hearing. We are clear that once she was past the preliminary hearing before Employment Judge Gumbiti-Zimuto, had final list of issues, had seen (or should have seen) all the documentary evidence from both sides and opportunity to study Mrs Peters' statement the merits should have been reassessed. Remarkably, neither Mr Umerah nor his wife read either of the costs warnings letters but only the covering emails. It is clear from later correspondence that Mr Umerah was aware that they had been costs warnings letters because he refers to them as such in his email of 14 January 2025. He did not, apparently, read them despite knowing that.

89. The second costs warning letter of 9 October 2024 analysed in considerable detail the prospects of success now that disclosure and exchange of witness statements has taken place: the respondent's representative explains why the claimant was not going to succeed. It is another well worded letter:

    a. The warning letter does not exaggerate the challenges she faces;

    b. It is worded in quite straightforward language;

    c. It is not aggressively worded – it dispassionately assess the evidence;

    d. It makes the point that the reasonable adjustments complaint was fundamentally flawed and explains why;

    e. It emphasises that Mrs Peters found out about the allegation about the 1 June 2023 incident before finding out about pregnancy – which was likely to be given weight by the tribunal when deciding what influenced her decision to dismiss the claimant;

    f. It emphasised that Mrs Peters' decision was made on claimant's own evidence. This undermines the main criticism by the claimant of the fact find and was demonstrably true;

g. It pointed out that the claimant had not explained why she thought the decision to dismiss was pregnancy rather than her own behaviour.

90. The claim of breach of the duty to make reasonable adjustments had no reasonable prospect of success on the basis of the claimant's own evidence.

91. We are not prepared to say that the pregnancy dismissal complaint had no reasonable prospects from the outset. However the merits were always weak because of the existence of an apparent genuine non-pregnancy related reason for dismissal. There was no explanation from the claimant for failing to heed the respondent's warnings or for why she rejected their offer to withdraw with each side bearing their own costs save to say that neither she (nor her husband) had actually read the respondent's careful attempts to stop this litigation before more of the charity's money was spent on it. We tend to agree that it is unreasonable conduct of the litigation not to read correspondence from the other party. We do not think it affects our conclusion that the claimant and her husband were not in fact aware of the contents of the letters. Mrs Umerah had authorised her husband to conduct the litigation for her and if he chose not to read the letters or ensure that she did so then she is bound by that conduct. It was unreasonable conduct of the proceedings to continue with them after disclosure of documents and exchange of witness statements when any merit they had originally had, was so likely to be found to illusory. This is particularly so when that had been carefully and clearly explained in a letter which any sensible litigant (or her representative) would have read but which Mr and Mrs Umerah, in effect, ignored.

92. We think the matters relevant to our exercise of discretion include:

a. The respondent is a charity. Its funds should be prioritised for the needs of service users. There is a public interest in charitable funds being used for the core activities of the charity rather than for defending claims which were always weak and which should have been discontinued well before trial.

b. The respondent argues that there is public interest in marking out spurious claims by way of costs orders. We have some sympathy with this. The claimant is someone who was dismissed because she was aggressive to a member of the public. She happened to be pregnant. That is simply not the same thing as saying that it happened to her because she was pregnant. It is not always easy for litigants in person to distinguish between something they think wrong or unfair and something which is unlawful but by the receipt of the second warning letter the claimant ought to have been in no doubt that her claim was overwhelmingly unlikely to succeed.

c. Once the claimant had the List of Issues she knew or ought to have known that some of it was not true on her own case – even if she genuinely believed she had been wronged in relation to some other part;

d. People should not be able to bring claims which have no merit and pursue them long after they should realise they have no merit without consequences. The tribunal has a costs jurisdiction and should exercise it in appropriate cases.

e. We also reflect that it can be hard to be on the receiving end of allegations of discrimination. Mrs Peters has been cleared but only after giving evidence and being cross-examined.

f. It was argued on behalf of the claimant that, had the respondent applied for a deposit order, she would have had the opportunity to hear from an employment judge an assessment of the merits and would have taken stock of the merits. As it was said in Vaughan, the absence of an application for a deposit order is not a bar to making a costs order. We have analysed the detailed and dispassionate costs warnings letters sent to the claimant. There is no criticism of the respondent for taking the view that they did not wish to seek a further costly preliminary hearing at which to argue that a deposit should be ordered as a condition of the claimant being able to pursue the claim. It is a factor to take into consideration. However, when weighed against the detailed assessment of merits in the costs warning letter, we think the absence of an application for a deposit order is of little consequence in the present case.

93. We have concluded that this is an appropriate case to award costs. Having reached that conclusion, we heard from the parties about the level of the costs award.

94. We remind ourselves that our assessment does not need to be solely based upon a party's means as at the date the order falls to be made. The fact that a party's ability to pay is limited as at that date does not preclude a costs order being made against him or her, provided that there is a 'realistic prospect that [he or she] might at some point in the future be able to afford to pay': Vaughan

95. The claimant had not prepared in advance details of her income and expenditure, despite being warned that the application would be made and that that information might been needed. Piecemeal information about her financial situation was provided and it quickly became apparent that the claimant's financial situation is very intertwined with that of her husband. She produced three months' bank statements. These show payments from an NHS Trust of approximately £2,000 per calendar month, presumably net of tax and national insurance contributions. She is training to be a Registered Nurse and working as a trainee nurse. She transfers a large proportion of that to her husband: there is nothing in particular in that because that may be how their joint financial affairs are organised. It does mean that the partial

information provided by the claimant makes it difficult to assess what her disposable income is without full and transparent disclosure from both of them.

96. We were also told that the claimant has to pay fees for her university course but that she has applied for a student loan to cover that. It appears that this application has not yet been completed. Mr Umerah alluded to an outstanding application for a visa which he implied would affect her eligibility for a loan. However, she has been accepted on the course at UK student rates and there is no positive information to suggest that her present lawful immigration status would not continue. Mr Umerah suggested that his wife might imminently give up work to focus on her studies; her present situation is that she has earnings of about £24,000 net per annum. The claimant referred to having debts – including joint debts; the respondent objected to us receiving evidence of joint debts when there had been no disclosure by Mr Umerah of his means. An email was sent by Mr Umerah after 4.00 pm and which did not come to the attention of the tribunal until the following day. It was therefore not taken into consideration in reaching our decision. In any event, it simply contained a screenshot confirming that a student loan application was pending.

97. Mr Crow took instructions and, having done so, the respondent limited their application to £9,500 which they estimated conservatively to have been incurred after the second costs warning letter. He confirmed that this excluded any element for VAT.

98. A detailed and granular assessment of means broadens enquiry to include alleged family debts, and Mr Umerah's position would inevitably need to be considered. That is not an enquiry which can fairly be carried out today. The respondent would need further disclosure and an opportunity to challenge what is said. The explanations given about the claimants future position imply uncertainty or change.

99. In those circumstances, we take into account her earnings. The claimant's bank account shows in last three months to December 2024 income of about £2,000 net of deductions paid into her account. This is about £24,000 per annum. We accept that we cannot be certain that she will continue to earn at this level and there is talk of debts and the burden of student debt. However, she is at present in receipt of regular income from an NHS Trust; she has been accepted on a nursing course at a UK university at UK student rates. She is training to be a nurse and must be expecting a nurse's salary when her training is completed. This may affect what has to be paid by way of student loan and, in any event, repayments are tied to income and are tapered.

100. In those circumstances we are satisfied that she has present regular income (although it might change) and the likelihood is that she will continue with her studies. There is no reason to think she will not complete them. Even if she

reduces or stops paid employment in the short term, there is every prospect that she will resume earning a reasonable wage in the foreseeable future as a nurse. She was on notice that there would be a costs application and of the sort of sums were being asked for. Even though she apparently did not take the prospects of losing the costs application seriously, she could have prepared more detailed information about means had the above information been grossly inaccurate.

101. She is a mother of two and no doubt there are family expenses but with this income and these prospects we are satisfied that Mrs Umerah would be able to pay £9,500 within a reasonable period.

102. That is the cost to the respondent of her continuing the claim after the second costs warning letter. There have been real costs and an impact on the respondent's services of loss of that money. We can see that £9,500 is a large sum of money for a person on the wages the claimant presently earns to pay. She will need to enter into an arrangement to pay it by instalments but even if it takes months or years to repay there is a reasonable prospect that she can repay it in a reasonable time. The claimant is ordered to pay the respondent £9,500 in respect of their legal costs.

Approved by:

Employment Judge George

Date: 25 February 2025..

Sent to the parties on: 28/02/2025

For the Tribunal Office

Notes

Public access to employment tribunal decisions

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/