# EMPLOYMENT TRIBUNALS

**Claimant:** **Mr Ryan Golding**

**Respondent:** **DPD Group UK Ltd**

**Heard at:** **Croydon (via CVP)** **On:** **29 and 30 April 2025**

**Before:** **Employment Judge Leith**

**Representation**
Claimant: In person
Respondent: Mr Adjei

**JUDGMENT** having been sent to the parties and written reasons having been requested in accordance with Rule 60(4) of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided:

# REASONS

Procedure, documents and evidence heard

1. This hearing was listed to consider, as preliminary issues:
    1.1. The Claimant's status, for the purposes of both the Employment Rights Act 1996 ("ERA 1996") and the Equality Act 2010 ("EqA 2010"); and
    1.2. Whether the Claimant had a protected belief for the purposes of s.10 EqA 2010.

2. The substantive issues in the case had not been fully clarified prior to this hearing being listed, so I proceeded on the basis that I needed to make a decision about both employment and worker status under the ERA 1996 (as well as employment status under the EqA 2010).

3. I heard evidence from the Claimant, and on behalf of the Respondent from Chris Betts, the Respondent's Head of Owner Driver Franchises. Both gave their evidence by way of pre-prepared witness statements, on which they were cross-examined.

4. I had before me a bundle of 304 pages. Reference within these reasons in [square brackets] are to page numbers within that bundle. At the start of the hearing the Claimant applied for permission to adduce one further

document, which was a single page from 347 page PDF document he had sent to the Tribunal and the Respondent at approximately 5pm the day before the hearing. I allowed permission in respect of the singe page the Claimant sought to rely upon, for the reasons I gave orally at the time.

5. At the conclusion of the evidence, I heard submission from Mr Adjei and from the Claimant. I then retired to deliberate, before delivering my oral judgment on the two preliminary issues the hearing had been listed to consider.

6. After I had delivered my judgment, the Respondent made an application that the Claimant pay its costs. These written reasons contain my reasons for both the substantive part of the hearing, and the question of costs.

Factual findings

7. I make the following findings on balance of probabilities. I have not dealt with every area canvassed before me; rather, I have focused on those necessary to reach a conclusion on the issues I need to decide.

8. The Respondent is a parcel delivery and collection company. To deliver and collect parcels, the Respondent uses employed drivers, and also drivers who it describes as "Owner Driver Franchisees" or "ODFs".

9. A franchise can be held by a person or by a limited company. A franchise gives the franchisee the opportunity to operate a delivery route. A route is not a specific collection of addresses. Franchisees may be required to deliver to any addresses within their franchise area. Nor is a route a guarantee of any particular level of work or number of deliveries on a given day.

10. It is possible for an individual to hold more than one franchise with the respondent, in which case they are referred to by the Respondent as a "Multi-Route Franchisee" or "MRF".

11. The Respondent's position is that where a franchise is held by a person rather than a limited company, the franchisee is an independent self-employed contractor.

12. The Claimant entered into a franchise agreement with the Respondent on 1 May 2020, for franchise FD32393 [139]. The relevant parts of the agreement are set out below:

    12.1. Clause 3.4 of the agreement provided as follows:

    > "As a result of the promises you have made in clause 2 and provided you follow and perform the agreements and restrictions set out in this Franchise Agreement, we appoint you to operate the Business in the Franchise Area in

accordance with the System and on the terms and conditions set out in this Franchise Agreement.

12.2. Clause 3.6 said this (in block capitals):

"YOU UNDERSTAND AND AGREE THAT WE ARE NOT OBLIGED TO ASK YOU TO PERFORM SERVICES FOR US AND THIS FRANCHISE AGREEMENT IS NOT A GUARANTEE THAT WE WILL PROVIDE WORK FOR YOU. TO BE CLEAR, AS YOU ARE RUNNING YOUR OWN BUSINESS, YOU WILL CONTINUE TO INCUR THE COSTS DESCRIBED IN THIS FRANCHISE AGREEMENT, EVEN IF WE DO NOT ASK YOU TO PERFORM SERVICES FOR US."

12.3. "Business" was defined as follows:

the business of:-
- supplying a Driver;
- supplying an E-Service Van; and
- using the Service Equipment;

to perform the Services in accordance with the System;

12.4. "Driver" was defined as follows:

"you, your employee, agent, contractor or partner who:-
- has all necessary qualifications to drive the E-Service Van in the Franchise Area including a full (not provisional) licence; and
- who is not less than 21 years old
- does not have any medical condition which prevents them from driving;
- if they have a medical condition that affects their driving, they have told the DVSA and have the DVSA's authorisation to drive; and
- who has been trained by you or by us in the standards, procedures, techniques and methods comprising the System;

AND who is engaged or employed by you to drive the E-Service Van and may include you, where you are an individual"

12.5. "Services" was defined as follows:

"the parcel delivery and collection services to be performed by you or on your behalf including Predict and other timed deliveries and delivery and collection services for DPD Local when we ask you to do so. The Services are described in the Products and Services sections of our website, www.dpd.co.uk and www.dpdlocal.co.uk (when we ask you to

perform delivery and collection services for DPD Local) as updated from time to time;"

12.6. "System" was defined as follows:

"the distinctive business format, method and procedures which we have developed and implemented using the DPD Name & Logo and the standard operational procedures and directions described in the DPD Academy including any changes to that format, method or procedures which we make;"

12.7. Clause 5 dealt with the Franchise Area, and it said this:

5.1 You may operate the Business only in the Franchise Area, but you understand that we may appoint other franchisees in the Franchise Area and we may provide collection and delivery services ourselves in the Franchise Area.
5.2 We may change the Franchise Area by giving you at least two (2) weeks' written notice. On the date set out in the notice, the Franchise Area will be changed as set out in the notice.
5.3 It may be that each time you provide the Services to us, the Services relate to the same Service Route. This is for administrative convenience only and to ensure an amazing service for our customers. You will not get any rights to a particular Service Route.

12.8. "Franchise Area" was defined as follows:

"the post codes serviced by your Local Depot (as changed from time to time) where you may operate the Business;"

12.9. "Service Route" was defined as follows:

"a grouping of collections and deliveries that enables parcels to be delivered in accordance with our customers' expectations"

13. In order to provide the services set out in the Franchise Agreement, the Claimant hired a vehicle from the Respondent. The hire agreement was appended to the Franchise Agreement.

14. It was common ground that drivers were expected to wear the Respondent's uniform. The Claimant's evidence was that he was given a service penalty for not wearing the correct uniform.

15. Drivers are required to attend the Respondent's depot within a fixed window to collect the packages they are to deliver that day. They attend the depot in three waves, at different times (as the depot would not have enough space for all of the drivers to load their vehicles at the same time, and as

some routes would have customers who required deliveries to be made within certain time windows). Mr Betts' evidence was that franchisees had some flexibility in terms of when they worked, in that they could choose which "wave" they wanted to work on. The Claimant denied that.

16. The Claimant's evidence was that prior to entering into the franchise agreement on 1 May 2020, he had undertaken driving work for another franchisee of the Respondent, Mr Shirley. The Claimant's evidence was that Mr Shirley held franchises for around five routes with the Respondent, and that the Claimant aspired to hold a number of franchises in the way that Mr Shirley did.

17. On 3 September 2021, the Claimant entered into a second franchise agreement with the Respondent, for franchise FD43188 [160]. The relevant parts of the franchise agreement were in the same terms as the previous agreement. The Claimant accepted in evidence that he would have had the opportunity to check and take legal advice on the terms of the agreement for franchise number FD43188 (although his evidence was that he had not been able to do so in respect of the first agreement).

18. The franchise agreement for FD43188 ran alongside that for FD32393.

19. On 17 September 2021, the Claimant entered into a further franchise agreement with the respondent for franchise number FD43188. The relevant parts of the franchise agreement were in essentially the same terms as the previous two agreements. Once again, that franchise agreement ran alongside the other two, so that the Claimant simultaneously held three franchise agreements with the Respondent.

20. There was in evidence before me a spreadsheet showing who had driven for each of the Claimant's franchises between 31 March 2022 and 7 February 2023. It showed that, for that period:

    20.1. The Claimant drove franchise FD42899.
    20.2. Franchise FD43188 was driven by Reon Golding, the Claimant's son.
    20.3. Franchise FD32393 was driven by a Nicola Wootton.
    20.4. There were days when the Claimant did not work, when either his son or Ms Wootton did undertake work for one of the Claimant's franchises.

21. The Claimant accepted in evidence that there were also occasions when another driver named Mark Allen worked on the franchises that he held, although they were not within the period covered by the spreadsheet. The Claimant did not suggest that the period covered by the spreadsheet was unrepresentative.

22. In around February 2021, the Claimant put forward a driver called Richard Lyall to be a driver on his franchises. There was in evidence before me a text message exchange between the Claimant and his Depot Manager (also

named Richard), on 2 March 2021. That was the late disclosed document. It showed that:

22.1. The Claimant messaged the Depot Manager saying this:

> "Hello Richard, I was just following up on my enquiry as to why I am having a problem adding a driver to my account"

22.2. The Depot Manager responded as follows:

> "Ryan. When Richard worked here before we had issues with him taking work. He wanted to finish early or said he couldn't do the stops he was asked. I would suggest you find a different driver."

22.3. The Claimant then responded "OK I now understand".

23. The Claimant's evidence was that the reason he had asked the Depot Manager was because the Respondent's system had shown that he could not register Mr Lyall as a driver. His evidence was that two weeks later he saw Mr Lyall working as a driver for another franchise holder at the depot.

24. The matter was not deal with in Mr Betts' statement, because it was not raised by the Claimant until the morning of the hearing. It came out of the document that he disclosed for the first time at 17:11 on the working day before the hearing. Mr Betts' evidence was that, having consulted the Respondent's systems, both the Claimant and another franchisee, Mr Shirley, had both tried to registered Mr Lyall as a driver on the Respondent's system on the same day, and that he could only be registered to one of them, which was why the system would not let the Claimant registered Mr Lyall. His evidence was that there was no reason why a driver could not drive for more than one franchisee, even at more than one depot, but they should only have one entry on the Respondent's system. His evidence was that he understood that the Claimant's depot manager had not forbidden the Claimant from using Mr Lyall; rather he had advised the Claimant against doing so given Mr Lyall's apparent previous unreliability.

25. The Claimant's evidence was that he has a belief that "all men are born equal". In the course of cross-examination his evidence was that he should perhaps have used the words "willing to stand up for his rights". His evidence in his witness statement was as follows:

25.1. His belief that all men are born equal has guided his thoughts, actions and moral framework throughout his adult life. He did not however give any examples of how he said that was the case, beyond a bare assertion.

25.2. His belief was more than an opinion or viewpoint. It was a central tenet of how he saw the world. He applied it to decisions in

daily life, to the way he interacts with others, and to how he judges fairness and injustice. It informs his ethical and moral standards, including expectations within the workplace. Once again, he did not give any examples of this beyond a bare assertion.

25.3. His belief concerns deeply important aspects of human life – such as social justice, fairness, and how people are treated in society.

25.4. His belief is part of a broader, coherent ethical outlook. It is consistent with human rights principles and the foundational values of equality before the law. It applies consistently across all areas of life – public, private, professional, and personal. Again, he did not explain his "broad, coherent ethical outlook", or explain how he applies it across his life.

Law

Employment and worker status

26. An "employee" is defined by section 230(1) Employment Rights Act 1996 (ERA) as being "an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment." "Contract of employment" is defined as meaning a contract of service or apprenticeship. Whether an individual works under a contract of service is determined according to various tests established by case law. A tribunal must consider relevant factors in considering whether someone is an employee.

27. In the words of McKenna J in *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* [1968] 1 All ER 433, QBD:

> 'A contract of service exists if these three conditions are fulfilled. (i) The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master. (ii) He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master. (iii) The other provisions of the contract are consistent with its being a contract of service.'

28. Employment contracts are an exception to the ordinary contractual principal that the ability of courts to look behind the written terms of a contract is limited to situations where there is a mistake that requires rectification or where the partiers have a common intention to mislead (*Autoclenz v Belcher* [2011] ICR 1157, SC). Rather, the question for the Tribunal is "what was the true agreement between the parties?". The written agreement is not even the starting point for determining employment status cases *(Uber BV and ors v Aslam and ors* [2021] ICR 657).

29. A "worker" is defined by section 230(3) ERA as being: "an individual who has entered into or works under (or, where the employment has ceased,

worked under)— (a) a contract of employment, or (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual."

30. Part 5 of the EqA 2010 deals with work cases. Section 39 provides protection against discrimination for employees. For the purposes of the EqA 2010, "employment" is defined in section 83, insofar as relevant, as:

> "employment under a contract of employment, a contract of apprenticeship, or a contract personally to do work"

31. The EAT considered the question of status in respect of franchise holders of the Respondent in the case of *Stojsavljevic and Turner v DPD* (UKEAT/0118/20). The two claimants in that cases were engaged as franchisees, but on different terms to the Claimant in this case. The judgment of the EAT nonetheless contains a helpful summary of the relevant law.

Protected belief

32. Section 10 EqA 2010 defines a belief as follows:

> "Belief means any religious or philosophical belief and a reference to a belief includes a reference to a lack of belief"

33. The EAT in the case of *Grainger plc and ors v Nicholson* [2010] ICR 360 set out guidance on what is capable of constituting a philosophical belief for the purposes of section 10. The EAT set out five criteria that must be met for a belief to qualify for protection. In order to qualify for protection, it must be:
    - 33.1. genuinely held;
    - 33.2. a belief and not an opinion or viewpoint based on the present state of information available;
    - 33.3. a belief as to a weighty and substantial aspect of human life and behaviour;
    - 33.4. attain a certain level of cogency, seriousness, cohesion and importance; and
    - 33.5. worthy of respect in a democratic society, not incompatible with human dignity and not conflict with the fundamental rights of others

Conclusions

34. I start with the Claimant's status.

35. The definitions of employee (in the ERA 1996), worker (in the ERA 1996) and employee (in the EqA 2010) are all different. What they all have in common is a requirement for personal service (from the definition in *Ready*

*Mix Contract* in respect of employment status in the ERA 1996, and from the statutory wording in respect of the other two).

36. The terms of the franchise agreements entered into by the Claimant are clear in that regard. The obligation they placed on the Claimant was to provide a driver – which could be him, or someone else. Of course, the written agreement is not determinative of status; nor is it even the starting point of the assessment. What I must consider is the reality of the relationship between the parties.

37. The reality of that relationship was as follows:

    37.1. The Claimant entered into three franchise agreements with the Respondent. Each equated to up to a full driver's workload. He could not possibly have serviced all three agreements personally; and indeed he did not do so. In respect of the period for which there was data in the bundle, two of the agreements were serviced exclusively by other drivers (the Claimant's son, and Ms Wootton). The Claimant did not suggest that that period was unrepresentative.

    37.2. Other franchisees were in the same position as the Claimant, in that they entered into franchises which they did not or could not service personally. Indeed, the Claimant's first experience of undertaking work for the Respondent came indirectly, when he worked for Mr Shirley on a franchise which Mr Shirley held with the Respondent.

    37.3. The Claimant was aware that there were other franchisees who held a number of franchises but did no driving themselves.

38. The EAT in the case of *Stojsavljevic* used the word "substitution" in the context of the agreement Mr Stojsavljevic had entered into with the Respondent, with reference to the previous case law on personal service, while expressing some reservation about whether that was the correct terminology in the circumstances. I do not consider that the language of "substitution" is apt in the case of the Claimant. This is not a case where the Claimant was under an obligation to provide the services himself but had the right to provide a substitute. There was no obligation at all on the Claimant to personally provide any service to the Respondent under any of the three franchise agreements he had enter into. The agreements even allowed for the possibility that the franchise holder may even be a limited company.

39. The Claimant raised a number of points regarding his relationship with the Respondent. Taking them in turn:

    39.1. In respect of Mr Lyall, there was some dispute in the evidence regarding exactly what happened. The Respondent's evidence was that Mr Lyall could not be registered to the Claimant because he had already been registered by another franchisee and he could only be registered once (although the fact that he had been registered by another franchisee would not stop him driving for the Claimant). The

Claimant's case was that he was unable to register Mr Lyall, but that two weeks later he saw Mr Lyall driving for another franchise holder at the same depot, and that he considered that that was a disparity of treatment. The issue could not be explored fully because it only became apparent on the morning of the hearing that the Claimant was seeking to rely on the incident with Mr Lyall as part of his case regarding his status. He had not referred to Mr Lyall in his pleadings or his witness statement, and he only disclosed the text message exchange at 17:11 the day before the hearing (as part of a 347 page PDF document). Even making allowances for the fact that the Claimant is a litigant in person, it is surprising that he had not raised the question of Mr Lyall in his witness statement if he considered it important to his case regarding status. But in any event, I do not need to decide exactly what happened with the attempt to register Mr Lyall. That is because even if I were to take the Claimant's evidence at its highest and accept that the Claimant was prevented from using his choice of driver, that was not inconsistent with the franchise terms, which did allow the Respondent a degree of control over who franchisees were permitted to use to drive on their behalf. And more importantly, it was not inconsistent with there being no obligation on the Claimant to personally provide the services to the Respondent. Self-evidently, the Claimant was not required to personally provide services to the Respondent, because in respect of two of the franchise agreements he entered into, he did not (and physically could not) do so.

39.2. The Claimant referred to the degree of control which the Respondent exercised over his work. He referred to having to wear uniform, to being given a service penalty for wearing a non-uniform hat, and to being required to start work at a time set by the Respondent, and requiring permission to take holiday. In the context of the test for employment status under the ERA 1996, those would all be relevant factors to the question of control. It is clear, and the Respondent did not deny, that they exercised a degree of control over the way that franchisees provided the services. Mr Betts referred to it being to retain control of the Respondent's brand identity, and to provide the service they had contracted to provide to their customers. The control that the Respondent exercised was captured in the franchise agreement. Those factors are not, however relevant the question of whether the Claimant was obliged to provide personal service. Nothing in the degree of control exercised by the Respondent changes the fact that there was no obligation on the Claimant to provide the services personally.

39.3. The Claimant referred to the fact that he was required to continue to make lease payments on the van he leased from the Respondent even when the Respondent provided no work to him under the franchise agreement. He described it as being "common sense" that he would need to be provided with work in order to meet the payments on the van. Of course, that is exactly what the franchise

agreement expressly provided for. The relevant term was not hidden away, or cloaked in obtuse language. It was written in block capitals, so as to stand out. Had the Claimant given the terms even the briefest of perusal, he would have well understood the bargain that he was entering into. But in any event, I am not concerned with whether the terms were objectively fair, or whether they constituted a good bargain for the Claimant. The issue for me to decide is the Claimant's status. And once again, there is nothing in the commercial structure of the agreement that required the Claimant to provide personal service to the Respondent.

39.4. The Claimant explained that he considered that the Respondent did not follow the terms of the agreement. He referred in his evidence to his route being changed at short notice, which he said was not permitted by the agreement without two weeks notice. Mr Betts' evidence was initially that that was not what the agreement said. The Claimant took Mr Betts to the relevant terms of the agreement, after which Mr Betts appeared to accept that the agreement meant that the Claimant's route could not be changed without two weeks' notice. To the extent that that was Mr Betts evidence, I consider he was plainly mistaken. The term to which the Claimant was referring was a term which referred to changing the Franchise Area. The Franchise Area was defined as the postcodes covered by the depot. That was a broad geographic area. That was consistent with the other evidence, which was that franchise holders did not cover a specific route, but rather that they could be required to deliver to any set of addresses within the area covered by the depot. Based on the franchise agreements in evidence before me, I do not consider that the Respondent breached the Claimant's franchise agreement by giving him different sets of addresses within the area covered by the depot at short notice (notwithstanding Mr Betts' apparent concession in evidence). But even if I had found that the Respondent had breached the franchise agreement in that respect, that would not have undermined my conclusion that there was no requirement for the Claimant to provide personal service.

40. Stepping back, and having carefully considered all of the points raised by the Claimant, I conclude that there was no requirement on him to provide personal service to the Respondent. I accept that the Claimant feels that the agreement he entered into with the Respondent was unfair, and was slanted against him, and was exercised in a way that he considered discriminated against him. But in order to bring the claims he seeks to bring, he would have to demonstrate that he was an employee within the meaning of the EqA 2010, or an employee or worker within the meaning of the ERA 1996. In order to show do so, he would have to show that there was some requirement for him to provide personal service to the Respondent. And on the facts as I have found them, there was simply no such requirement.

41. It follows then that the Tribunal does not have jurisdiction to consider any of the claims, and they are all struck out.

42. In light of that, I do not strictly speaking need to reach a conclusion on the question of whether the Claimant's belief was a protected one. But because I have heard evidence and submission on it, I nonetheless briefly express my conclusions on the point.

43. It was put to the Claimant in the course of cross-examination that there was an inconsistency between the way the belief he relied upon was captured in EJ Lumby's CMO, and the way the Claimant described it in his witness statement, in that:
    43.1. Paragraph 3 of the CMO referred to it as "a belief that all men are equal before the law"
    43.2. The Claimant's witness statement referred to it as a belief that "all men are born equal".

44. Mr Adjei very properly pointed out in submissions that in fact it was captured in those two slightly different ways the CMO, in that at paragraph 11(a) of the CMO it was captured as "a belief that all men are born equal". I do not hold that against the Claimant. But what the point does throw into sharp relief is the fact that the Claimant had not specified the belief he relied upon within his claim. And of course when the point was put to the Claimant in cross-examination, he suggested a very different formulation in oral evidence.

45. Furthermore, the Claimant's witness statement was entirely devoid of any evidence of the way the belief manifested itself. It merely contained a bald assertion regarding each of the *Grainger* criteria. He had clearly taken some steps to familiarise himself with the relevant legal test, because he addressed each of the stages in *Grainger.* When it was put to the Claimant in cross-examination that his statement lacked specificity, he explained that he did not know what level of detail he needed to include. But EJ Lumby's CMO set out in entirely clear terms that the witness statements for the preliminary hearing were required to contain "everything relevant the witness can tell the Tribunal".

46. In his closing submissions, the Claimant referred to the annual service for the opening of the legal year in Westminster Abbey. He described being taken aback that his belief was being "disregarded" by the Respondent. He then said "I wonder if I would have done better wearing a turban or having a crucifix on". None of that was dealt contained in his evidence, and it was not entirely clear what point it was intended to make.

47. Of course, I bear in mind that the bar for a protected belief should not be set too high, and there is no need for the belief to have the same status or cogency as a religious belief. But the way the Claimant has described the belief is somewhat vague. And this is where the lack of any evidence regarding how he says he has applied the belief and how it has guided him in his everyday life does not assist. The Claimant suggested in evidence that he could have gathered evidence from friends who could have told the Tribunal that that is their experience of him; but of course he did not gather

or present that evidence. Nor was there any evidence of him espousing his belief to colleagues (which EJ Lumby's CMO captured him saying he had done). The only evidence I have to decide the case on his very limited witness statement.

48. It cannot be that, by reducing what he says about his belief to a single sentence supported by bald assertions that it meets each of the *Grainger* criteria, the Claimant can then claim his belief is cogent and coherent merely because there are no internal contradictions in his evidence. It is easy to avoid internal contradiction by simply saying very little; but that does not mean that the belief is cogent or cohesive. And it is telling that when cross examined, the Claimant gave an entirely different description of his belief – namely that he weas "willing to stand up for his rights".

49. Weighing all of that up, on the very limited evidence before me I am not satisfied that the Claimant's claimed belief attains the necessary level of cogency, seriousness and cohesion to constitute a protected philosophical belief. Nor am I satisfied on the evidence before me that it is genuinely held; because there is simply nothing beyond the Claimant's a bare assertion on which I could conclude that the claimed belief is a genuine one.

Costs
Law

50. The Tribunal's power to make a costs order or a preparation time order is set out in Rule 74 of the Tribunal Rules:

> "74. (1) A Tribunal may make a costs order or a preparation time order (as appropriate) on its own initiative or on the application of a party or, in respect of a costs order under rule 73(1)(b), a witness who has attended or has been ordered to attend to give oral evidence at a hearing.
> (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.
> (4) Where in proceedings for unfair dismissal a final hearing is postponed or adjourned, the Tribunal must order the respondent to

pay the costs incurred as a result of the postponement or adjournment if—
(a) the claimant has expressed a wish to be reinstated or re-engaged which has been communicated to the respondent not less than 7 days before the hearing, and
(b) the postponement or adjournment of that hearing has been caused by the respondent's failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the claimant was dismissed or of comparable or suitable employment.

51. Rule 73 defines a costs order and a preparation time order.

52. The process for considering a costs order or a preparation time order is set out in rule 80, as follows:

> 80.—(1) The Tribunal may make a wasted costs order on its own initiative or on the application of a party.
> (2) A party may apply for a wasted costs 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.
> (3) The Tribunal must not make a wasted costs order unless the representative has had a
> reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order)
> in respect of the application or proposal.
> (4) The Tribunal must inform the representative's client in writing of any proceedings under this rule and of any order made against the representative.

53. The amount of a costs order is set out in rule 76:

> 76.—(1) A costs order may order the paying party to pay—
> (a) the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party;
> (b) the receiving party the whole or a specified part of the costs of the receiving party, with the amount to be paid being determined—
> (i) in England and Wales, by way of detailed assessment carried out either by a county court in accordance with the Civil Procedure Rules 1998(33), or by the Tribunal applying the same principles;
> (ii) in Scotland, by way of taxation carried out either by the auditor of court in accordance with the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019(34), or by the Tribunal applying the same principles;
> (c) another party or a witness, as appropriate, a specified amount in respect of necessary and reasonably incurred expenses for the purpose of, or in connection with, an individual's attendance as a witness at a hearing;
> (d) an amount agreed between the paying party and the receiving party in respect of the receiving party's costs.

(2) Where the costs order includes an amount in respect of fees charged by a lay representative, for the purposes of the calculation of the order, the hourly rate applicable for the fees of the lay representative must not exceed the rate under rule 77(2) (the amount of a preparation time order).
(3) A costs order under sub-paragraphs (b) to (d) of paragraph (1) may exceed £20,000.

54. Rule 82 deals with ability to pay, and provides as follows:

> 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.

55. Where a Deposit Order has been made, Rule 40 (7) and (8) provide as follows:

> "(7) If the Tribunal following the making of a deposit order decides the specific allegation or argument against the depositor for substantially the reasons given in the deposit order—
>
> (a) the depositor must be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 74 (when a costs order or a preparation time order may or must be made), unless the contrary is shown, and
>
> (b) the deposit must be paid to the other party (or, if there is more than one, to such other party or parties as the Tribunal orders), otherwise the deposit must be refunded.
>
> (8) If a deposit has been paid to a party under paragraph (7)(b) and a costs order or preparation time order has been made against the depositor in favour of the party who received the deposit, the amount of the deposit must count towards the settlement of that order."

56. When considering whether to make a costs order or preparation time order, the Tribunal must apply a two stage test. First, the Tribunal must consider whether the relevant ground is made out. Secondly, the Tribunal must consider whether it is appropriate to exercise its discretion in favour of awarding costs against that party. It is for the party seeking costs to satisfy the Tribunal that the costs jurisdiction in engaged. Thereafter, it is for the Tribunal to satisfy itself that it is right and proper to exercise its discretion to award costs (*Haydar v Pennine Acute NHS Trust* EAT 0141/17).

57. Costs in the Tribunal are the exception rather than the rule. The rules regarding costs have been described by the Employment Appeal Tribunal as a "high hurdle" (Burton J in *Salinas v Bear Stearns International Holdings Inc and anor* [2005] ICR 1117).

58. "Unreasonable" has its ordinary English meaning (*Dyer v Secretary of State for Employment* EAT 183/83).

59. In determining whether to make a costs order on the ground of unreasonable conduct, the Tribunal needs to take in to account the "nature, gravity and effect" of the conduct in question – *McPherson v BNP Paribas (London Branch)* [2004] ICR 1398 (CA). The Tribunal must not, however, lose sight of the totality of the circumstances (*Yerrakalva v Barnsley Metropolitan Borough Council and anor* [2012] ICR 420 (CA)).

60. Costs in the Employment Tribunal compensatory not punitive. The Tribunal must consider the effect of any unreasonable conduct on the part of the party against whom the application is made, although there is no need for a precise causal link between the party's conduct and the specific costs being claimed (*Yerrakalva v Barnsley Metropolitan Borough Council and anor* [2012] ICR 420).

61. The Tribunal does not need to take into account a party's means in deciding whether to make an order, or if so in what amount. It is merely a factor the Tribunal may take into account. And if the Tribunal does take means into account, the fact that a party's means are limited as at the date of the hearing does not preclude an order being made against them, provided that there is a "realistic prospect that [they] might at some point in the future be able to afford to pay" – *Vaughan v London Borough of Lewisham and ors* [2013] IRLR 713 EAT.

Discussion

62. The starting point in respect of costs is that on 27 February 2024, EJ Dyal made a deposit order in the sum of £50. EJ Dyal's reasons for making the Deposit Order were, in summary, that the chance of the Claimant satisfying the Tribunal that there was some requirement of personal service under his agreement with the Respondent was "very slim".

63. It is relevant that when explaining his reasons for setting the deposit order at the sum that he did, EJ Dyal recounts that the Claimant refused to discuss his financial position over CVP, even in a private hearing, beyond stating that he was on Universal Credit.

64. On 7 February 2025, the Respondent's solicitor, Mr Ashwood, emailed the Claimant headed "Without Prejudice Save as to Costs". In that email, Mr Ashwood referred to comments he had made at the Preliminary Hearing on 4 October 2024. He acknowledged that the Claimant was upset and angry about the way he felt he had been treated by the Respondent, but noted that he did not consider that the Tribunal was the correct jurisdiction because he considered that the Tribunal would find that the Claimant was self-employed. He referred in particular to the need for personal service in order for the Claimant to be able to bring the claims he was seeking to bring in the Tribunal. He referred also to EJ Dyal's Deposit Order.

65. Within the same email, Mr Ashwood explained the Tribunal's power to award costs, and he provided a link to the Employment Tribunal Rules of Procedure. He noted that if the Claimant did not succeed in showing that he was not self-employed, the Respondent would seek a costs order. He invited the Claimant to withdraw his claim by no later than 21 February 2025, and explained that the Respondent would not seek costs from the Claimant if he withdraw his claim by that time. He concluded by urging the Claimant to take advice, and he attached to his email a leaflet produced by the Tribunal setting out sources of legal advice.

66. The Claimant did not respond to Mr Ashwood's email.

67. On 26 April 2025, Mr Ashwood emailed the Claimant again. By that point, the Claimant had produced his witness statements. Mr Ashwood explained why he considered that, even on the Claimant's evidence, his claim not to be self-employed could not succeed. He explained that he Respondent was therefore seeking costs incurred since the 21 February 2025 (the date by which his previous email had invited the Claimant to withdraw his claim). He included again a link to the Employment Tribunal Rules of Procedure. He said this:

> "You should also come prepared to explain your current financial situation and ability to pay DPD's costs and have documents ready to support what you say about that (for example, bank account statements, payslips, regular bills and so on)."

68. Mr Ashwood concluded the email by again encouraging the Claimant to seek advice. He attached the schedule of the Respondent's costs incurred since 21 February 2025, which were in the total sum of £11,638.

69. I concluded that there was no requirement for the Claimant to provide personal service to the Respondent under his agreement with the Respondent. It was on that basis that I determined that the Tribunal did not have jurisdiction to consider the Claimant's claims, and they should be struck out.

70. After I had delivered my judgment with reasons, Mr Adjei explained that the Respondent was seeking costs. We adjourned for an hour to allow the Respondent to send through the two "without prejudice save as to costs" emails referred to above, and to allow the Claimant to consider his position. Before the adjournment, I explained to the Claimant that in considering whether to make a costs order, and if so in what sum, I could take into account the Claimant's means. The Claimant informed me that he would want me to take his means into account. I therefore explained to him that I would need to hear evidence about his income, outgoings and savings. I referred him to Court Form EX140, not as a template that he must complete, but rather as a guide to the type of information that I would require in order to assess and take account of his means. I encouraged him to think about that during the adjournment.

71. When we resumed, the Claimant explained that he did not object to a costs order being made in principle, but that he objected to the sum being sought. When I asked him to explain why, he explained (in summary) that he did not intend to waste the Tribunal's time or the Respondent's time, and that he had believed that there was an issue for the Respondent to answer (although he was careful to acknowledge that he did understand and accept the Tribunal's reasoning for striking out his claims).

72. I asked the Claimant if he had any submissions he wanted to make on the Respondent's calculation of their costs. He explained that he did not. I then asked him if he wanted me to take his means into account, and that if so I would hear evidence from him regarding his financial position. The Claimant explained that what he was willing to say was that he was on universal credit, and that was all he could say about his financial situation. He then asked if he could have the opportunity to take some advice. I refused to adjourn the hearing to allow the Claimant to take advice, bearing in mind the overriding objective, because:

    72.1. The Claimant had already had numerous opportunities to do so prior to the hearing;
    72.2. Adjourning the hearing would delay the final resolution of the proceedings; and
    72.3. Adjourning the hearing would also increase costs for the parties and the Tribunal (which I was conscious were also costs which may, depending on my eventual decision, be ones which the Claimant himself had to meet).

73. I then asked the Claimant again if he wanted to give evidence about his financial means. He explained that he did not. That is consistent with the way the Claimant approached the question of means in the hearing before EJ Dyal. The Respondent had very properly informed the Claimant that he should attend the hearing prepared to give evidence about his means. He was notably unwilling to give such evidence before me, as he had been before EJ Dyal.

74. The sum total of the information I had regarding his means was that he is currently on Universal Credit (which of course he did not tell me as sworn evidence, although I have no reason to disbelieve it). But that on its own gives a very incomplete picture, and I was troubled that the Claimant had shown a pattern of being unwilling to give evidence about his means. In the circumstances, I consider that I cannot properly take the Claimant's means into account, so I take no account of the Claimant's means.

75. Although the Claimant explained to me that he did not object to the making of a costs order in principle, given the way he made his submissions regarding the amount of a costs award I consider that it is proper not to take that concession at face value. I have therefore made my own decision about whether to make a costs order.

76. The starting point is, of course, that I have found against the Claimant for substantially the same reason as EJ Dyal made the Deposit Order. The effect of that is twofold:

    76.1. The Respondent is entitled to the deposit paid by the Claimant.
    76.2. The Claimant is treated as having acted unreasonably unless the contrary is shown.

77. In this case, since the deposit order was made, the Respondent has sent the Claimant a clear and comprehensive costs warning email. The Claimant explained to me that he was distrusting of the Respondent following the way he had been treated during his time as a franchise holder. I accept that he would naturally be distrusting of the Respondent. But:
    77.1. The email from the Respondent's solicitor was clearly and fairly explained, and (importantly) encouraged the Claimant to take legal advice. That is not the action of a party which is trying to mislead about the possibility of a costs order being made.
    77.2. The email echoed (and referred to) EJ Dyal's rationale for making a deposit order.

78. I bear in mind that the Claimant felt strongly that the Respondent had treated him unfairly and should be brought to account for that. The Respondent's solicitor acknowledged the Claimant's depth of feeling in the cost warning email. But the Claimant appeared to have failed to engage the point made by EJ Dyal, and reiterated by the Respondent's solicitor; namely, that aside from his sense of grievance, he could only succeed in his claims if there had been a requirement upon him to provide personal service to the Respondent.

79. In the circumstances, I consider that, far from there being anything to rebut the presumption of unreasonableness in rule 40(7), the Claimant continued to act unreasonably in continuing to litigate in the face of the Respondent's the costs warning email. I am therefore satisfied that the threshold test is made out.

80. I then turn to consider whether it is appropriate to make an order for costs. In this case:

    80.1. The Claimant has continued to pursue claims which, even taking his own evidence at its highest, were misconceived given the lack of any obligation to provide personal service.
    80.2. He has done that in the face of warnings from both the Tribunal and the Respondent's solicitors that his claim was very unlikely to succeed, and that there may be cost consequences if he proceeded. He was also warned about the potential magnitude of the costs being sought.
    80.3. He has consequently caused the Respondent to continue to incur costs in defending his claims.

81. I appreciate that the Claimant had strong feelings; many litigants do. I appreciate also that he is not a lawyer and lacks the objectivity that a professional representative would have. But in the circumstances, I consider that this is a case where it is appropriate to make such a costs order.

82. I then turn to consider the amount of the costs order. The Respondent only seeks its costs from expiry of the "drop hands" offer made in the email of 7 February 2025.

83. All of the solicitor costs are claimed by a Partner, Mr Ashwood, at the rate of £370 per hour. A total of 116 units (11 hours and 36 minutes) are claimed. Given the work that is set out in the schedule, and the Tribunal's experience of litigation of this type, I do not consider that that is unreasonable.

84. I do, however, consider that it is unreasonable that all the work was done by a Partner. The Respondent's solicitors are a large firm. For example, the first entry on the list is five hours for compiling a bundle and witness statement. That is work, particularly the work of producing a bundle, which could have been delegated to a considerably more junior fee earner.

85. I bear in mind that cases involving employment status are legally relatively complex. So too is the question of the protection of philosophical belief, which is a matter where the law developing. This case involved three separate, relatively lengthy franchise agreements.

86. In the circumstances, taking the broad-brush approach appropriate to summary assessment of costs, I award 6 hours at a junior fee earner rate, and 6 hours at the Partner rate. That is slightly higher than the number of hours currently being claimed, to account for the fact that there would inevitably be some duplication or overlap in having a junior fee earner involved. I consider that it appropriately reflects the balance of the work which could have been carried out at a more junior level, with the higher level work and supervision which was appropriately carried out by a partner.

87. I am not bound by the Solicitors Guideline Hourly Rate applicable under the Civil Procedure Rules, but I have had regard to them. The London South Employment Tribunal would fall into the London 3 bracket. The Partner rate claimed for Mr Ashwood is a little higher than the London 3 rate; but given the complexity of the claim I do not consider that the rate claimed is inappropriate for the six hours I have awarded at partner rate.

88. I then award the remaining six hours at the Band C fee earner rate for London 3, which is £204 per hour. That give a total for solicitor costs of £3,444, made up as follows:

    88.1. 6 x £370 = £2,220
    88.2. 6 x £204 = £1,224

89. Given the complexity of the matters to be considered and the two day listing, I consider that the appointment of Mr Adjei was entirely appropriate, as too were his fees. I therefore award counsel's fee in the sum of £7,250 for the two day hearing. That gives a total of £10,694. Taking a step back, I am satisfied that that is proportionate bearing in mind the complexity of the case, the volume of evidence, and the fact that it required a two-day preliminary hearing to consider the issues of status and belief.

90. Of course, the Respondent will have the £50 deposit, and that is offset against the costs incurred. So my order is that the Claimant must pay the Respondent's costs in the sum of £10,644.

Employment Judge Leith

Date: 27th May 2025

Reasons sent to parties on:
Date: 12th June 2025

For the Tribunal Office