EMPLOYMENT TRIBUNALS

Claimant: Ms Chenniqua Jean Tavernier

Respondent: We Are With You

Heard at: Bury St Edmunds (by video)

On: 1 May 2025

Before: Employment Judge Graham

Representation
Claimant: Mr J Fireman, Counsel
Respondent: Mr J Wallace, Counsel

JUDGMENT having been sent to the parties on **10 June 2025**, and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided.

REASONS

Introduction

1. The all-day private preliminary hearing of 1 May 2025 had been listed following an earlier hearing on 17 March 2025. At that time the Claimant was represented by Mr Bidnell-Edwards of Counsel, for the 1 May hearing the Claimant was represented by Mr Fireman of counsel. The Respondent was represented by Mr Wallace at both hearings.

2. The purpose of the 1 May 2025 hearing was for case management and to deal with the Respondent's applications for costs against the Claimant.

3. Most of the hearing was spent attempting to finalise the list of issues before moving on to consider the issue of costs. The Respondent had applied for costs on three grounds. The first of which was with respect to what it said was an amendment application from the Claimant. I declined to deal with that on 1 May 2025 and recorded that if is to be pursued it could be dealt with at the end of the final hearing. I later determined, after undertaking case management, that an amendment was unnecessary as the whistleblowing detriment complaint (which did not appear in the original particulars of claim) was no longer pursued.

4. The Respondent also applied for costs with respect to the withdrawal of the unfair dismissal and wrongful dismissal complaints. I also declined to deal with that on 1 May 2025, and I recorded that if that application is pursued it could also be dealt with at the end of the final hearing.

5. The Respondent also applied for costs in respect of the conduct of the hearing of 17 March 2025 on the Claimant's behalf which I had to adjourn at 12pm due to the late provision of amended particulars of claim which were sent to the Tribunal after the hearing had started. I granted that application to the sum of £1,730. The reasons for that decision are set out below.

6. The conduct of the private preliminary hearing on the Claimant's behalf on 17 March 2025 was deeply unsatisfactory. Within the case management summary I recorded the following as to what happened at that hearing which neither party has sought to challenge:

> 1. *This matter came before me for case management earlier today. The Claimant's particulars of claim were drafted by the Claimant and indicated that she was complaining of indirect sex discrimination, and also wrongful dismissal which it was said was contrary to s. 103A Employment Rights Act 1996 which is obviously an error. The ET1 has the box for unfair dismissal ticked even though the Claimant had less than two years continuous service with the Respondent.*
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> 2. *Since filing her ET1 the Claimant has obtained legal representation who on 4 and 5 March 2025 applied for a postponement of today's hearing as they had only recently been instructed, however that was opposed by the Respondent and then refused by the Regional Employment Judge on 10 March 2025.*
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> 3. *At the start of today's hearing I was informed that amended particulars of claim had been sent to the Tribunal however I had not received these, neither had Mr Wallace. We had a break of 15 minutes to find them however they did not arrive until after my return, and I noted that these had been sent at 10:05am that day. It is possible that an earlier email had been sent, however nothing was identified by my usher as having been received before then. Mr Bidnell-Edwards informed me that the amended particulars were a re-labelling exercise.*
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> 4. *Upon reading the amended particulars it appeared that the changes were not identified by track changes which necessitated another email to be sent with a PDF version with the track changes visible. There was then a discussion between me and the parties as to whether these were amendments or relabelling and also the appropriate way forward. Mr Wallace indicated that the Respondent would need time to consider the contents and to take instructions whereas Mr Bidnell-Edwards indicated that we could and should proceed today. My concern was that fairness would require the Respondent to have had sight of the proposed amendments well in advance of today's hearing so that advice might be provided and instructions could be given.*
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> 5. *I observed that a number of the factual matters relied upon in the amended particulars already appeared in the original claim which had hitherto been labelled by the Claimant as indirect sex discrimination, but which initially appeared to me to have been potentially mislabelled.*

Of note there was now a complaint for whistleblowing which had not been expressed as such before, although the Claimant as I have recorded had included a reference to wrongful dismissal "– s. 103A ERA 1996" in the original version. That statutory provision obviously refers to automatic unfair dismissal for having made a protected disclosure.

6. *I attempted to make some progress today and confirmed that the complaints of ordinary unfair dismissal and wrongful dismissal were withdrawn. A separate judgment was produced dismissing those upon withdrawal. I then directed an adjournment of 75 minutes from 10:45am to 12pm for the Respondent to read the amended particulars, to see if it was possible to take instructions, and to tell me how it invited me to proceed given this new document and the time we had already spent.*

7. *I attempted to read as much of the amended particulars as possible, attempting to cross reference them with the original particulars, noting that much of the detail was already in there, however some of it was expressed differently and I would have required more time to consider whether in fact this was merely a relabelling as suggested or if these were brand new allegations. There was not sufficient time for me to complete that task.*

8. *Upon our return shortly after 12pm Mr Wallace informed me that he would require further time to discuss the issue with his client and to take instructions given the size and nature of the amendments. It appeared to me that an adjournment was being sought, whereas the request was made by the Respondent (albeit not expressed as an adjournment specifically) that does not mean that it was necessitated by the Respondent. The receipt of the amended particulars after the start of the hearing meant that time would be needed to consider the contents and to take instructions on whether there was a relabelling exercise, and whether to oppose it. It appeared to me that was entirely an appropriate approach and Mr Bidnell-Edwards did not object to re-listing.*

9. *I record that Mr Wallace says that the adjournment of today was not on the application of the Respondent but was due to the late provision of the amended particulars which meant we had insufficient time for case management. I further record that Mr Bidnell-Edwards disagreed and said that today's hearing has not been adjourned or postponed.*

10. *It was agreed that the appropriate way forward would be to re-list today's hearing and for the Respondent to inform us if it intends to oppose to the amendment application.*

11. *Mr Wallace referred me to Rule 74(2)(c) and indicated that the Respondent would be applying for its legal costs arising out of today's hearing being adjourned.*

12. *I have therefore listed a further private preliminary hearing for case management which will be to consider any objections to the amendment of the claim, to clarify and finalise the legal issues and to make directions for the final hearing, and to consider any application for costs from the Respondent.*

> *13. I encourage the parties to work together and to produce an agreed list of issues for discussion at the next hearing, and to file a copy with the Tribunal in advance. That would help to minimise unnecessary expenditure of time and costs and would be in furtherance of the overriding objective.*

7. I also gave directions to both parties with respect to the costs application including for the provision of witness statements and information as to the Claimant's means.

8. Prior to the hearing on 1 May 2025, I was provided with the following:

   8.1 A bundle of documents of 168 pages including Respondent's application for costs; witness statement from Helen Crossland (Respondent's solicitor); Respondent's billing information; Claimant's response to the costs application and her witness statement; the Respondent's correspondence chasing evidence of the Claimant's means; and without prejudice correspondence;

   8.2 Evidence of the Claimant's means comprising bank statements, pay slips and Universal Credit payments; and

   8.3 Respondent's skeleton argument.

Application and submissions

9. The Respondent's application for costs is made under Rule 74(2)(a) which concerns unreasonable conduct of proceedings; and also Rule 74(2)(c) which concerns the postponement or the adjournment of a hearing on the application of a party made less than 7 days before the hearing begins.

10. The Respondent argues that the hearing of 17 March 2025 was adjourned and wasted due to the Claimant's belated application; she had sought to postpone the hearing without reasonable grounds; she failed to engage with the Respondent on the draft list of issues or the agenda as ordered; she failed to notify the Respondent of her proposed amendments to the particulars of claim; she failed to provide reasons for the delay in making the amendment application; and she failed to notify the Tribunal that more time would be required at the start of the hearing. The Respondent says that due to these matters the hearing was materially unproductive and could not proceed and/or was adjourned.

11. The witness statement of the Respondent's solicitor, Ms Crossland, sets out a chronology of the matter starting with the date of the ET1 of 22 February 2024; the Claimant provided details of the alleged PCP on 2 September 2024; the preliminary hearing was listed on 5 December 2024 advising that it had been listed for three hours and directions were made with respect to a draft list of issues; on 24 February 2025 the Claimant notified that she had instructed solicitors; on 4 March the Claimant's solicitor sought a postponement; on 5 March the Respondent opposed the application; on 7 March Ms Crossland sought to agree the list of issues and agenda but no response was received; on 10 March the Regional Employment Judge refused the postponement; and on 12 March Ms Crossland filed the Respondent's list of issues and agenda.

12. Mr Wallace for the Respondent tells me that the Claimant has demonstrated a repeated pattern of leaving things until the last minute and acting at the 11th or 12th hour, she only provided her witness statement and limited information as to her means at 6pm the night before this hearing, contrary to the directions I had issued. Mr Wallace described this as the Claimant's *modus operandi* and this was not a one off incident and there was no supervening event.

13. Mr Wallace reminds me that the Claimant's amended particulars were sent after the hearing had already started on 17 March 2025 and having checked the metadata of the Word document they had been worked on by the Claimant's counsel 9-10pm the night before yet they were not sent until the last minute after the hearing had already been started.

14. Mr Wallace tells me that the gateway under Rules 74(2)(a) and (c) has already been made out and he refers me to the judgment of the EAT in ***Ladbroke Racing Ltd v Hickey*** **[1979] I.C.R. 525** where a costs order for vexatious conduct was upheld by the EAT as that hearing needed to be adjourned when the paying party sent documents to the Tribunal 45 minutes before the hearing, whereas in this case they were sent after the hearing had already been started. I note that in the ***Hickey*** case the court held the following:

> *"In our judgment it cannot be said that the industrial tribunal exercised their discretion — if they had one — wrongly. While we have some sympathy for Mr. Burroughs in the way that he prepared his documents and delivered them only 45 minutes before, he really must not be surprised if that is regarded by an industrial tribunal as taking the other side by surprise. If he has a large bundle of documents, on which the employers wish to rely, it is really essential, in order that the other side can have the opportunity of taking instructions and appreciating what is involved in those documents, that they should be passed over, if they are going to be passed over at all, sufficiently long beforehand to make it possible. To deliver them only 45 minutes before the case is due to be called on, while it has obvious administrative convenience, really is not giving the other side a chance. We feel bound to say that if Mr. Burroughs has managed to get away with this before, the sooner he stops the less expensive it is likely to be for the employers. We do not find that there was any error of law or, indeed, otherwise, in the order making the adjournment and in the order charging the employers with the cost of the adjournment..."*

15. Mr Wallace reminded me that the preliminary hearing had been listed since 5 December 2024, the Claimant recorded on 24 February 2025 that she had lawyers instructed, the Claimant's solicitors made a postponement application on 4 March 2025 which was opposed by the Respondent and rejected by the Regional Employment Judge on the basis that the Claimant had sufficient time to prepare. Mr Wallace said that instead, the Claimant had counsel work on amended particulars the night before hearing and if it was a mere relabeling he asked why did she need counsel to do it as her solicitor should have been able to have done it.

16. Mr Wallace says that the Claimant has still failed to explain in her witness statement the reason why this was done so late as she had the Respondent's Response since September 2023.

17. Mr Wallace says that the financial information from the Claimant is incomplete but it appears at some point she was earning £9,000 per month from Meta (Facebook) as set out on her pay slips, she appears to have various accounts or pots of money (not disclosed), there are various transfer to savings accounts including an investment or stocks and shares portfolio (not disclosed), and at best the Tribunal does not know her means which he says are grounds not to consider them.

18. Mr Fireman for the Claimant reminds me that costs within this jurisdiction are exceptional, he disputes that any of the grounds are made out, and he refers me to the decision in ***Larwood v Earth Tronics Inc Ltd*** **EAT 0558/03** where it was held that given that there was no obligation upon a party to instruct a solicitor, it could not be unreasonable conduct, of itself, to instruct solicitors after proceedings had been instituted. Similar arguments are made in the Claimant's objections to the costs application of 17 April 2025 where she argues that in the relevant period she was actively seeking legal representation. In the Claimant's witness statement she suggests at first she believed she could represent herself but it became clear that she would need a lawyer to assist part way through proceedings.

19. The Claimant also argues in her objections and in her witness statement that she did not seek to amend her claim, she sought to provide additional information about her claim. Mr Fireman says that the crux of this application is the late provision of the amended particulars of claim and asks me to consider what would have happened had they not been provided, and he argues that the Respondent is combative. Mr Fireman says that the threshold for unreasonable conduct of proceedings is high and this was a single incident of late submission of a late amended particulars of claim. Mr Fireman says that these were not ideal circumstances and he suggests the Claimant instructed solicitors at the end of February 2025 and further information had been sought from her about the claim and we are still at an early stage of proceedings.

20. I noted from the Claimant's objections to costs of 17 April 2025 she said the following:

    "Nevertheless, the hearing proceeded as scheduled. While some progress was made, the Respondent's representative failed to fully engage with the process. Notably, the Respondent's representative was unable to provide substantive instructions or to address key issues during the hearing, despite the presence of decision-makers and legal counsel. This lack of cooperation and preparedness contributed to inefficiencies in the hearing and delayed progress on several matters."

21. The above did not reflect my recollection of the hearing, and it was not advanced by Mr Fireman before me, nevertheless I will address that below.

22. Mr Fireman addressed me on the Claimant's means telling me that we do not have the full picture, there is a savings account which has not been disclosed which the Claimant says she does not have immediate access to.

I am told that there was in the region of £25,000 in the account, although Mr Fireman was not particularly clear or confident about that. The documents form the Claimant suggest that she was in receipt of Universal Credit for January, February and March 2025. The pay slip for November 2024 shows a net pay of just over £6,000, for December 2024 it shows net pay just over £2,700, and for January 2025 it shows net pay of just over £4,500.

23. Mr Wallace for the Respondent replied that the Claimant was in receipt of universal credit but appeared to have savings which exceed the threshold and he told me that this was a reason to distrust what the Claimant says about her means.

Law

24. Rule 74 Employment Tribunal Rules of Procedure 2024 provides:

"(1) The 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,
…

(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."

25. It is clear from the wording of Rule 74 that costs remain discretionary and the word "must" only requires the Tribunal to consider whether to make a such an order in the circumstances identified. It does not follow that I must make that award.

26. Rule 76 provides:

"The amount of a costs order

(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, or by the Tribunal applying the same principles..."*

27. Rule 82 provides in that in deciding whether to make a costs order (and when determining the value of the order) the Tribunal may have regard to the paying party's ability to pay.

28. The approach to be followed when dealing with an application for costs was helpfully set out in ***Millin v Capsticks LLP*** **UKEAT/0093/14/RN** at paragraph 52. In summary there three stages, first the tribunal must be of the opinion that the paying party has behaved in a manner referred to in the Rules, but if of that opinion, it does not have to make a costs order. It has still to decide whether, as a second stage, it is "appropriate" to do so. In reaching that decision it may take account of the ability of the paying party to pay. Having decided that there should be a costs order in some amount, the third stage is to determine what that amount should be.

Conduct – Rule 74(2)(a)

29. There is no definition of abusive or disruptive conduct within the Rules, however in the case of ***Garnes v London Borough of Lambeth*** **EAT 1237/97**, the EAT upheld a costs order on this basis where it had included conduct that was frivolous and involved failure to comply with orders and delays, oppressive behaviour and seeking to ambush the other party in the hearing.

30. As regards unreasonably bringing or conducting proceedings, the word unreasonable should bear its ordinary English meaning and is not to be interpreted as something similar to vexatious – ***Dyer v Secretary of State for Employment*** **EAT 183/83**. Whereas a tribunal should consider the nature, gravity and effect of a party's unreasonable conduct, it does not mean that each should be considered separately – ***Yerrakalva v Barnsley Metropolitan Council and another*** **[2012] ICR 1398.** It will be for the tribunal to look at the full picture of the conduct, identifying the specific conduct, what was unreasonable about it, and what effect that conduct had.

31. In ***Yerrakalva*** the court clarified that whereas causation is a relevant factor it is not necessary for a tribunal to determine whether there was a precise causal link between the unreasonable conduct in question and the specific costs being claimed, and as indicated above, it is not a requirement for a tribunal to dissect a case in detail and compartmentalise the relevant conduct under separate headings such as nature, gravity and effect. The tribunal's task will be to look at the whole picture of what happened 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 affect it had. Subsequent cases have again encouraged tribunals not to go beyond an appropriate broad brush first instance assessment or to adopt an overly-analytical approach.

Stage two – exercise of the discretion

32. A tribunal has a discretion whether to make an order for costs if a ground is made out, the tribunal is not obliged to do so. The burden rests with the party who is applying for costs to establish that the costs jurisdiction is engaged. Cost orders are fact specific and should be dealt with as summarily as possible therefore issue based costs orders are to be avoided.

I must consider all that which appears relevant, and disregard that which is not.

33. It was held in ***Gee v Shell UK Limited*** **[2003] IRLR 82**:

"35. It is nevertheless a very important feature of the employment jurisdiction that it is designed to be accessible to people without the need of lawyers, and that — in sharp distinction from ordinary litigation in the United Kingdom — losing does not ordinarily mean paying the other side's costs…"

34. Moreover, costs are compensatory for the receiving party and are not intended to be punitive on the paying party. Given their compensatory nature, that will involve consideration of the loss sustained and these should be limited to those which are reasonably and necessarily incurred.

35. When determining whether to exercise my discretion I may have regard to the paying party's ability to pay. It is unnecessary for the assessment of means to be limited to the date when the order falls to be made, and the fact that the ability to pay is currently limited does not preclude a costs order being made where there is a realistic prospect that the paying party may be able to afford to pay at some point in the future – ***Vaughan v London Borough of Lewisham and others*** **[2013] IRLR 713.**

Stage three – the amount of the order

36. I remind myself again at this stage that cost orders should be compensatory in nature not punitive, and that it is necessary to consider what loss has been caused to the receiving party, and any order for costs should be limited to those reasonably and necessarily incurred – ***Yarrakalva***. Even where a loss is identified, it is still necessary to take into account other factors such as the conduct of the parties, and the tribunal may take into account the means of the paying party.

37. Where means are taken into account a tribunal should record its findings about the ability to pay a costs order. Where means are not taken into account a tribunal should explain why – ***Jilley v Birmingham and Solihull Mental Health NHS Trust*** **UKEAT/0584/06**.

38. I am not obliged to make a precise calculation of what the paying party can afford, nor am I required to limit costs to an amount the paying party can afford to pay – ***Arrowsmith v Nottingham Trent University*** **[2012] ICR 159** as that party's circumstances may well improve. The likelihood of an improvement in circumstances may be a relevant factor to consider, and in ***Vaughan*** an order was upheld even though the claimant could not presently meet a substantial payment however there was a realistic prospect that she might be able to do so in the future. Whatever order is made would need to be enforced in the county court which can consider means from time to time.

Decision

39. I start by reminding myself that costs are the exception and not the rule in this jurisdiction. I have followed closely the guidance in the ***Millin*** case. I start with considering whether the grounds of the application have been

made out.

40. I find that in providing amended particulars of claim **after** the start of the hearing on 17 March 2025, rather than in a timely manner in **advance** of that hearing, this was disruptive conduct. The Claimant had more than sufficient time to instruct her solicitors and counsel well in advance of that hearing. There was no excuse for those particulars arriving after the hearing started. The Respondent tells me, and the Claimant has not disagreed, that the document's metadata showed the Claimant's counsel working on the document the night before the hearing. This was incredibly late. When the document was sent by the Claimant's solicitor after the hearing started there was no apology or explanation for the late provision. Even now there has been no explanation by the Claimant or her lawyers why they provided the document after the hearing started.

41. The Respondent was ambushed by this late provision of the amended document, it had no time to take instructions before the start of the hearing, moreover it was not even clear what had been changed as the first version of the document did not even contain track changes, therefore I had to try and compare the documents myself before the correct version was sent later.

42. I found the Claimant's criticisms of the Respondent or its lawyers in her objections of 17 April 2025 to be the opposite of what happened during that hearing. If the Respondent was unprepared, it was because the Claimant's solicitors sent the amended particulars after the hearing had started, they were taken by surprise and had no idea what had been changed as it was not even indicated via track changes. Once the track change version arrived it was clear that there had been considerable revision to the document necessitating time to consider what had in fact been changed and what this meant for the claim which had been brought. By way of example, a whistleblowing detriment complaint was particularised which had not been identified before, although that was not pursued in the 1 May hearing.

43. I am not persuaded by what the Claimant says about the timing of her instructing her solicitors. According to what the Claimant told Ms Crossland at the time, the Claimant's lawyers had been instructed on or around 24 February 2025. There had been more than sufficient time for the Claimant's lawyers to take instructions well in advance of the hearing of 17 March 2025. Any competent solicitor should have been able to prepare in the three weeks before the hearing. I make no criticism of the Claimant for not instructing solicitors until 12 months after filing her ET1.

44. The Claimant says she has not sought to amend her claim. This misses the point. The Claimant provided a document entitled Amended Particulars of Claim and it contained considerable changes to the particulars – some of which (as I have indicated above) were not identified in the first version. It was the provision of this document at the **time** it was, in the **format** it was, suggesting it was an **amendment**, which caused the disruption. Had the Claimant provided a document setting out further and better particulars of claim, and had she provided that well in advance of the hearing, then that would have been a different matter. That is not what happened here. It was impossible to know what had been amended without sufficient time to consider the contents, and to allow the Respondent's lawyers to take

instructions, and that is what caused the disruption in this case.

45. I record for completeness that at the hearing of 1 May 2025 I determined that an amendment was not required, however that could not have been known at the 17 March hearing given the late provision of amended particulars which included a now abandoned complaint of whistleblowing detriment. The Respondent's question as to why the Claimant provided Amended Particulars of Claim at all, also remains unanswered.

46. After having a break to consider the amended particulars on 17 March, there was less than an hour remaining and the Respondent's lawyers still needed to take instructions from their client. The decision to adjourn the hearing was made by me in furtherance of the overriding objective to avoid wasting further time and legal costs and to put the parties on an equal footing so that the Respondent could review the contents and take instructions. The adjournment was not on the application of either party, it was a decision I took, nevertheless it was necessitated by the Claimant's conduct (or the conduct on her behalf by her lawyers).

47. I was satisfied that in doing so, the Claimant has conducted proceedings unreasonably even at this early stage. The Respondent's legal costs were wasted at that hearing. The legal costs in preparation for that hearing were not however wasted as that work would have needed to be done anyway for the hearing of 1 May 2025.

48. Accordingly, I am satisfied that the grounds under Rule 74(2)(a) are made out. I did not find that the grounds under Rule 74(2)(c) were made out as neither party applied at that hearing for an adjournment or a postponement – it was a decision I took due to the disruption which had been caused.

49. The first stage of the guidance in ***Millin*** has therefore been satisfied.

50. I move on to the second stage, noting that even if the grounds are made out, it does not automatically follow that I must make an order – I still retain a discretion. I may consider a paying party's means at this second stage, noting that if I do not take them into account I should say why.

51. I was minded to exercise my discretion at this second stage. Had the Claimant been a litigant in person I would have made allowances for that, however the Claimant was in the advantageous position of having not only solicitors on board but also counsel. Tribunal hearing time was wasted by the Claimant's conduct, the Respondent's costs were wasted as a result, and the hearing was unproductive as the Respondent argues. I was concerned to read the Claimant seek to argue in her objections that it was the Respondent which was at fault as it was unprepared and uncooperative. That was simply untrue. The fault lay solely on the Claimant's side and nowhere else.

52. I was also persuaded by Mr Wallace's arguments that this conduct demonstrated the Claimant's approach to these proceedings, with documents for this hearing also arriving late or not provided, such as evidence of the Claimant's means.

53. I took into account the Claimant's means only to the extent that I could as

the information provided was incomplete, and the impression I gained from Mr Fireman was that the Claimant had other bank accounts which had not been disclosed but there was some savings in them. I noted the Claimant appeared to be a high earner whilst working at Meta, and whereas she says she is in receipt of Universal Credit now, she says (and I have not seen evidence of this) that there is a bank account with approximately £25,000 in there which she says she cannot immediately access.

54. I have considered the Claimant's means, and I find that she could afford to pay an award of costs should I make an award. I therefore exercised my discretion to make an award at this second stage because a costs order was justified taking all of the relevant factors into account.

55. As to the third stage and the value of the award, I am mindful that the preparation for the hearing would need to have been done in any event. I do not intend to reimburse the Respondent for work which needed to be done anyway, noting the exceptional nature of costs awards in any event. My focus was on the costs wasted and incurred by the conduct I have identified.

56. Taking into account the nature of the unreasonable conduct and the Claimant's means I was minded to compensate the Respondent for three hours of counsel's time at the previous hearing, two hours of counsel's time spent dealing with costs for and at this hearing, and one hour of Ms Crossland's time today having made a witness statement.

57. Taking into account the hourly rates of both (counsel at £275 per hour and solicitor at £355 per hour), I made an award of costs in favour of the Respondent of £1,730. I concluded that this award was justified, it was compensatory in nature, it was not punitive, and it was a figure the Claimant could afford, and those costs had been reasonably and necessarily incurred by the Respondent.

Approved by:

Employment Judge Graham

23 June 2025

REASONS SENT TO THE PARTIES ON

27/06/2025

FOR THE TRIBUNAL OFFICE