EMPLOYMENT TRIBUNALS

Claimant: Faith Rivers

Respondent: Medway Council

Heard at: Croydon (by CVP)

On: 17 July 2025

Before: Employment Judge Liz Ord

Representation:

Claimant: Not appearing
Respondent: Ms N Gyane (counsel)

COSTS JUDGMENT

1. The respondent's application for costs against the claimant is granted on the grounds the claims had no reasonable prospect of success and the claimant conducted the proceedings in a vexatious, abusive, disruptive and unreasonable manner. The claimant is ordered to pay the respondent costs in the sum of £20,000.

2. The claimant's application for costs against the respondent is refused.

REASONS

The Applications

1. The respondent's fully reasoned costs application was sent to the claimant on 30 January 2025, following the grant of an extension of time for its submission. The claimant applied for an extension of time on 10 February 2025 to reply, which was granted to the 13 June 2025. The tribunal ordered the claimant to provide full information on her means including assets and income. The claimant failed to do so.

2. The claimant submitted a holding response on 11 February 2025, which contained a cross application for costs. No further response was submitted.

Chronological background

3. The claimant presented a claim to the employment tribunal on 29 May 2020 alleging whistleblowing detriment, automatic unfair dismissal, race and disability discrimination, harassment, and breach of contract. The respondent denied all claims.

4. On 1 April 2021 at a case management hearing, the claimant (represented by a Direct Access Barrister) and the respondent agreed a list of issues, and the full merits hearing (FMH) was listed for 7-14 March 2022.

5. The respondent sent the claimant a FMH bundle on 1 October 2021, which was returned undelivered, as the claimant did not collect it. An electronic copy and hard copy was sent to the claimant in February 2022.

6. The claimant applied in February 2022 to postpone the FMH on the basis she did not have sufficient time to prepare. This was refused. The claimant made a second application at the beginning of March, this time on medical grounds. This application was also refused.

7. The claimant only exchanged witnesses statements on the last working day before the FMH, despite the respondent chasing for earlier exchange. On the first day of the FMH (7.3.2022) the claimant applied to strike out the respondent's defence. This was refused..

8. On the second day of the FMH (8.3.2022), the claimant applied for the FMH to be postponed pending her EAT appeal. This was refused.

9. The claimant was called to give evidence and as she was being sworn in, she apparently became unwell and logged out of the hearing. Later that day she produced the top part of a letter from the Accident and Emergency Department of Darent Valley Hospital dated 8 March 2022. There is no body to the letter and the information it contains is limited. The extract says:

   "Reason for Attendance:
   Stroke/TIA
   Complaints Comments:"

10. She applied for the hearing to be postponed and this was granted.

11. A later email from the Dartford and Gravesham NHS Trust dated 14.3.2022 states that the discharge letter the claimant had been issued with was correct. The discharge letter has not been produced in evidence. Consequently, it is unclear what the claimant's medical condition actually was.

12. The FMH was relisted for 17 – 25 July 2023. On 17 July 2023 the claimant made an application to postpone on the basis she had an ill child at home that required her care, and also there were outstanding applications of hers that required determination. This was granted.

13. The FMH was relisted for 25 November to 3 December 2024. The respondent sent the FMH bundle to the claimant on 20 November 2023 and the identical bundle was again sent to her on 10 November 2024.

14. On 20 November 2024, the claimant sent a completely re-constituted bundle to the respondent and to the tribunal. At the FMH, at which the claimant was professionally represented, she made an application for her own bundle to be adopted as the documents bundle. This was refused. Through her representative, she then made an application to amend the list of issues, which was allowed in part to clarify certain allegations without amending the substantive issues. These applications delayed the start of the hearing.

15. After considering all relevant evidence, the unanimous decision of the tribunal was to dismiss all of the claims in full.

16. The potential for the respondent making a costs application was raised towards the end of the hearing. Applications were made by the respondent in January 2025 and by the claimant in February 2025. The applications were listed for hearing for 17 July 2025.

17. On the evening of 16 July 2025, the claimant made an application to postpone the costs hearing due to her stress and anxiety and inability to face the judge (myself) again. This was refused. A separate order has been made with reasons for the refusal.

Settlement Discussions

18. On 12 November 2021 the respondent made an offer to the claimant to settle her case for £500, whilst making it clear that they believed her claims were misconceived and had no reasonable prospects of success.

19. The offer was made “without prejudice save as to costs”. The claimant did not accept it.

20. The claimant replied with a counter offer for either:
    - £75,500 plus 2 month’s contractual notice, or
    - Reinstatement and back pay to date.

21. The respondent did not accept the counter offer.

Tribunal Judgment at FMH

22. Both an oral judgment and written reasons (dated 8.4.2025) were given for the panel’s unanimous decision to dismiss all claims. The written reasons make clear that the claimant lacked credibility and reliability. Paragraph 20 reads:

    “… the claimant was evasive with her answers in cross examination. Her answers were largely inconsistent with the contemporaneous documents. We found her to be neither credible nor reliable. In fact we go as far as to say that many of her claims were delusional and without any basis. Some of them were directed at professionals, whose reputation could have been

damaged."

23. There are several passages within the judgment, which demonstrate the weaknesses of the claimant's allegations and I do not repeat them here. They are clear to read.

Law and procedure

24. The Employment Tribunal Procedure Rules 2024

Rule 74 states relevantly:

(1) …

(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 the proceedings, or part of it, have been conducted,

(b) Any claim, response or reply had no reasonable prospects 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) …

(4) …

Rule 82 states:

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.

25. I have had regard to the case law contained in the respondent's application. The following principles from the caselaw are of particular importance.

26. An award of costs is the exception rather than the rule in Employment Tribunal proceedings, as acknowledged in **Gee v Shell UK Limited** [2003] IRLR 82.

27. In **Monaghan v Close Thornton Solicitor** [2002] All ER (D) 288 (Feb) paragraph 22, the EAT confirmed that an award of costs is a two-stage exercise. First the question is whether the discretion pursuant to Rule 76 (as it then was) has arisen. The second question is whether that discretion should be exercised by making an award of costs and if so, in what amount.

28. In **Yerrakalva v Barnsley Metropolitan Borough Council** [2011] EWCA Civ 1255, the EAT stated at paragraph 41: "the vital point in exercising discretion was to look at the whole picture of what had happened in the case and to ask whether there had 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 had."

29. **Growcott v Glaze Auto Ltd** UKET/0419/11/SM demonstrates that costs can be awarded if a reasonable offer is made to settle and a hopeless case is still pursued. In Growcott, the claim was weak, the weaknesses of the case had been set out to the claimant with a costs warning. Despite this, this claimant persisted. The claimant had been on notice as to the weaknesses of her claim from the lodging of the respondent's defence and further as explicitly set out in the respondent's strike out application.

Discussion and Conclusions

1) Respondent's application for costs

No reasonable prospects of success

30. Our written reasons for the judgment set out in detail why the claimant's case was weak. Some aspects are discussed below.

31. With respect to the whistleblowing detriment and automatic unfair dismissal claims, we found that no protected disclosures were made. Some of the allegations were non-specific and difficult to understand. Other communications were clearly legal advice being given/discussed by the claimant. It is noted that the respondent's response to the claim relied on the fact the claimant was giving legal advice as a complete defence to her protected disclosure claim.

32. With regards to the temporary gestational diabetes relied on by the claimant as a disability, we found that this was not a disability and the claimant was disingenuous when she told the respondent she had diabetes which was controlled by diet.

33. As for the migraines, again we did not find this to be a disability. We did not find the claimant's evidence to be credible. The documentary evidence suggested that any migraines she may have had were few and far between and did not have a substantial effect on her day to day activities. Contrary to her evidence, they were generally not at the times she alleged and were infrequent.

34. There was no evidence whatsoever of any race discrimination. The evidence was totally devoid of anything from which such an inference could have been drawn. The contemporaneous documents demonstrated that several of the allegations did not occur at all, and others were twisted to suit the claimant's case. The same goes for the lack of evidence of harassment.

35. As for the breach of contract, there was none. It was clear from the documents that the agreement to extend the claimant's contract to October 2021 was subject to her passing the CILEX exams. She did not even take her CILEX exams, let alone pass them.

36. With respect to her notice pay, she was given more notice than she was contractually entitled to and was paid accordingly. The claim was baseless.

37. The respondent made an application to strike out the claimant's claims or alternatively for a deposit order, but the application was never listed for

hearing by the tribunal.

38. The claimant was on warning from the respondent early on in the proceedings that her claim lacked merit.

39. It was unreasonable of the claimant to continue the proceedings after she had received the settlement offer in November 2021. The claimant's counter offer was wholly unrealistic.

40. The respondent warned her at the time that her claims had no reasonable prospect of success and explained why they took that view. An extract from the offer letter reads:

    "..there is no evidence to support your purported public interest disclosures or your claims regarding discrimination and failure to make unreasonable (sic) adjustments. … perhaps most concerning, the evidence confirms that you misled the Council, into believing that you were actively pursuing your CILEX studies and had successfully passed your CILEX when you knew this not to be the case; bringing into question your credibility."

41. Considering all of the above reasons, I find that the claims had no reasonable prospect of success.

Claimant's conduct

42. The manner in which the proceedings were conducted was disruptive, abusive and unreasonable with respect to the large number of applications to postpone close to or during the hearing, the claimant's lack of co-operation over documentation and the late exchange of witness statements. This led to additional costs for the respondent.

43. The unfounded allegations the claimant made were serious and damaging. This was particularly so as the respondent is a public authority and the claimant struck at the heart of its governance. The allegations had the potential to cause significant reputational harm to both the council and the legal officers concerned.

44. The claimant was well aware of what her contract said and she knew she had not taken the CILEX exams, yet she still made the breach of contract claim. This was abusive.

45. It was unreasonable for the claimant to continue once the lack of merit in her claim was brought to her attention by the respondent and the settlement offer was made.

46. For these reasons, I find that the claimant acted vexatiously, abusively, disruptively and unreasonably in the way she conducted the proceedings.

Discretion

47. Having found that the grounds for making a costs order are met, I will now consider whether to use my overall discretion to award costs.

48. Costs are the exception rather than the rule in employment tribunals and

are not awarded lightly. In considering this matter, I must step back and consider the whole picture.

49. The claimant has caused considerable, unreasonable delay in these proceedings, which were commenced in May 2020. Her multiple applications to postpone hearings and her lack of co-operation have been disruptive and costly to the respondent.

50. Her claim was weak and she was put on notice of this at an early stage yet, despite an offer to settle, she unreasonably chose to continue.

51. The claimant made serious, unfounded allegations against her colleagues. She, as a lawyer herself, would have been aware of the damage this could cause to reputation.

52. The respondent is a public body with finite resources funded by the tax payer. It should not have to be put to the considerable expense of defending unmeritorious, vexatious claims.

53. Taking all of the above into account, I exercise my discretion by awarding costs against the claimant.

Amount of costs

54. I was unable to consider the claimant's ability to pay as she did not provide any information on her financial means, contrary to my order.

55. The respondent has only claimed the costs and disbursements of the final hearing and the disbursement for the costs hearing, capped at £20,000 inclusive of VAT.

56. The respondent's costs schedule shows their solicitor's costs to be £3,560, being 80 hours at £44.50 per hour. The number of hours is high because there were the additional matters of the claimant's reconstituted bundle of documents and the amended list of issues to deal with on top of the general preparation for trial. In my view these costs are reasonable.

57. The respondent's counsel charged a discounted rate of fees to the respondent because it is a local authority. Given the large amount of documentation needing to be read through, and the fact it was a multiday case with a long list of issues to address, the brief fee of £5,000 plus VAT and the refresher fee of £10,000 plus VAT are reasonable.

58. With respect to counsel's fees for the costs application, this is £1,250 plus VAT. There were a number of matters to consider and documents to analyse. Submissions were necessarily of considerable length. In my view the fee is proportionate.

59. Considering these costs overall, in my judgment the costs were all proportionate, and reasonably and necessarily incurred. Therefore, I order the claimant to pay the sum of £20,000 costs to the respondent.

2) Claimant's application for costs

60. On the 11 February 2025, the claimant sent to the tribunal and to the respondent a document entitled "Claimant's Holding Response to Respondent's Application for Costs and Claimant's Cross Application for Cost (sic)."

61. In it she suggests that the respondent's application for costs is an abuse of process, is vexatious and is based on malice. She refers to the respondent not following through with their application to strike out her case and not previously making an application for costs.

62. She goes on to make various criticisms of the trial judge (myself).

63. The claimant then refers to the oral case management order made on the last day of the hearing setting deadlines for the respondent to submit their costs application and for the claimant to respond. The respondent missed the deadline.

64. However, the respondent wrote to the tribunal explaining that their solicitor incorrectly noted the due date and it was only after contacting counsel that they realised the situation. They informed the claimant that they were making a costs application on 7 January 2025. The record of the case management order was not sent to the parties until 4 February 2025. The respondent was given an extension of time to submit the application and the claimant was given a significant extension of time to reply. None of this constitutes a breach which merits a costs order.

65. The claimant submits that the respondent's defence was vexatious, based on malice and groundless. I do not agree. There is no basis for this submission.

66. In conclusion, there is nothing in the claimant's application which persuades me that the tests for awarding costs against the respondent have been met. Therefore, the claimant's application is refused.

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Employment Judge Liz Ord
Date 17 July 2025

JUDGMENT SENT TO THE PARTIES ON
3 September 2025
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FOR THE TRIBUNAL OFFICE