EMPLOYMENT TRIBUNALS

Claimants: **C**
D

Respondents: **R1**
R2
R3
R4
R5
Peninsula Business Services Ltd (R6)

Heard at: **By video** **On:** **21 July 2025**

Before: **Employment Judge S Moore**

Representation
Claimants: Mr C Howells, Counsel
Respondents 1-5: Mr D Mitchell, Counsel
Respondent 6: Mr McFarlane, Solicitor

RESERVED JUDGMENT

1. The first second and third respondents are ordered to pay C's costs attributable to dealing with the police reports on a joint and severable basis.

2. The first, second, third, fourth and fifth respondents are ordered to pay D's costs attributable to dealing with the claims of D's PID detriment and s.27 EqA claims on a joint and severable basis as the response had no reasonable prospects of success (Rule 76(1)(b)).

3. The first, second, third, fourth and fifth respondents are ordered to pay D's costs attributable to dealing with the claims of C's PID detriment and s.27 EqA 2010 claim on a joint and severable basis as the response had no reasonable prospect of success (Rule 76(1)(b)).

4. The sixth respondent is ordered to pay C and D's wasted costs arising from the improper, unreasonable and negligent conduct.

REASONS

Background and Introduction

1. This was a costs hearing heard by video. Judgment was reserved. There was an agreed costs bundle. The Tribunal heard evidence from the claimants and R2. I was assisted by skeleton arguments from the parties.

2. The claimants applied for costs in November 2023, updated in November 2024. This application was adjourned pending the reserved judgment on remedy. The respondents appealed Judge Ryan's strike out of the response to the EAT and requested a stay in respect of the costs proceedings. This was refused and a costs hearing was listed on 11 December 2024 but this was adjourned as the claimants made an application to add R6 and pursue a wasted costs order against them following disclosure leading up to the aborted 11 December 2024 hearing. Permission was granted at a preliminary hearing on 31 March 2025 and the hearing today was listed. The respondents appeal has been dismissed by the EAT.

3. The history of these proceedings is long and complex. I am grateful to Mr Howells for his procedural history in the claimants costs submission which I partially adopt[1] as follows. The references to R's representatives are references to R6.

Date	Event
7 Sept 2021	C issued his claim with the Tribunal
9 Sept 2021	D issued her claim with the Tribunal
6 Apr 2022	Tribunal accepted the responses issued on behalf of the Rs
27 Jul 2022	Preliminary Hearing for Case Management by telephone before EJ MacDonald
2 Aug 2022	Notice of Final Hearing issued (6–15 March 2023, 8 days)
12 Aug 2022	C and D submit Further and Better Particulars of their respective claims
26 Aug 2022	Rs submit amended responses to both claims
2 Feb 2023	Preliminary Hearing for Case Management; March hearing confirmed with further orders made
15 Feb 2023	Cs representative requested disclosure of documents incl. audio recordings (R failed to reply)
16 Feb 2023	Deadline for Rs to disclose additional material (Rs in breach)

[1] I have removed some of the commentary and deal with those matters in my findings below where necessary

21 Feb 2023	Deadline for Rs to produce final hearing bundle (Rs in breach)
23 Feb 2023	Rs representative advised bundle work would begin on 23 or 24 Feb
24 Feb 2023	Rs had not produced bundle; no updated list of issues; Cs applied to vacate hearing
27 Feb 2023	Rs produced chronologies, cast list, revised list of issues but no bundle; witness statement deadline missed
28 Feb 2023	EJ Sharp asked Rs to comment on Cs application to postpone hearing by 4pm (Rs failed to reply)
1 Mar 2023	Preliminary Hearing by telephone; final hearing postponed; Cs wasted costs issue reserved
15 Jun 2023	Further Preliminary Hearing for Case Management before EJ Jenkins
6 Jul 2023	Deadline for Rs to disclose additional documents (Rs in breach)
11 Jul 2023	Rs disclosed some, not all, required documents
13 Jul 2023	Cs raised concerns: missing audio, R5 disciplinary docs, C's logbooks, dismissal letter
20 Jul 2023	Deadline for Rs to provide revised hearing bundle index (Rs in breach)
24 Jul 2023	Cs applied under rule 37(1)(c) to strike out responses for non-compliance
22 Aug 2023	EJ Povey directed Rs to respond to strike out application by 29 Aug
29 Aug 2023	Rs failed to respond (Rs in breach)
26 Sept 2023	EJ Brace issued Strike Out warning; Rs to request hearing by 3 Oct if objecting
3 Oct 2023	Rs requested hearing at 22:17 to resist strike out
4 Oct 2023	EJ Jenkins converted 11 Oct Preliminary Hearing to public hearing
11 Oct 2023	EJ Ryan struck out the defences to the claims
6–9 Nov 2023	Final hearing; Cs costs application adjourned
7 Apr 2024	Remedy judgments for C1 and C2 sent to parties
5 Jul 2024	Rs applied for stay of costs hearing
18 Jul 2024	ET refused stay application
11 Dec 2024	Costs hearing postponed; Cs applied to add R6 and pursue wasted costs
31 Mar 2025	Preliminary hearing; R6 added as respondent; Cs granted permission to pursue wasted costs

Grounds for the application for costs against R1- R5

4. The respondents have acted disruptively and otherwise unreasonably in the way they have conducted these proceedings. This is advanced on the following basis:

    a) Repeated breaches of Orders of the Tribunal.
    b) The Rs reported C to the police after he submitted his first claim.
    c) Failure to properly negotiate a settlement.
    d) Costs hearing had to be adjourned.

5. The defence to C's harassment related to disability claim had no reasonable prospect of success (recording) (Rule 76(1)(b))
6. The defence to D's sexual harassment claim had no reasonable prospect of success (Rule 76(1)(b))
7. The defence to D's PID detriment and s.27 EqA claims had no reasonable prospects of success (Rule 76(1)(b))
8. The defence to C's PID detriment and s.27 EqA 2010 claim had no reasonable prospect of success (Rule 76(1)(b))

Grounds of application for wasted costs against R6

9. These are as follows:

a) On 15th February 2023 the Claimant's solicitor, Emma Quenby, provided Peter Collins with a list of outstanding disclosure. That disclosure was needed before the bundle for the final hearing could be finalised. The final hearing was scheduled to begin on 1st March 2023.
b) Peter Collins acted negligently in failing to respond properly, or at all, to that request for disclosure.
c) The consequence of Peter Collins' negligence was that the final hearing on the 1st March 2023 had to be adjourned.
d) The Claimants incurred legal fees in respect of the aborted final hearing. They now seek to recover those wasted costs from Peninsula.
e) The documents requested of the Respondents on 15th February 2023 remained outstanding until 11th July 2023, at which point Peter Collins disclosed some (but not all) of the evidence that had previously been requested.
f) On 13th July 2023 the Claimants' solicitor asked Peter Collins for the outstanding disclosure but received no reply.
g) On 24th July 2023 the claimants applied for responses to be struck out for non-compliance with Orders, pursuant to rule 37(1)(c) of the Tribunal rules. The responses were struck out on 11th October 2023. The claimant had still not received the outstanding disclosure at the date of that strike out hearing.
h) Peter Collins acted negligently in failing to satisfy the Claimants' request for disclosure.
i) That request had been outstanding since 15th February 2023, and had resulted in the final hearing scheduled for 1st March 2023 being vacated.
j) The Claimants' solicitor chased Peter Collins on 13th July 2023 for a response. The Claimants incurred costs in respect of this issue and seek to recover those wasted costs.

k) The Claimants incurred further wasted costs in having to apply for the responses to be struck out. The Claimants now apply to recover those wasted costs.

Findings of fact

10. R1 entered into an agreement with R6 in June 2021. After the claimants presented their claims R2 worked with the representatives on the case. A final hearing for 6-13 March 2023 was listed by Judge McDonald on 27 July 2022. In February 2023 the representative changed to Mr Collins. There was a preliminary hearing before Judge Ryan on 2 February 2023 as the C had issued a new claim and applied to amend his victimisation claim. It was agreed the new claim could be dealt with at the final hearing and this could still go ahead with some amendments to the orders for preparation of the hearing. Disclosure by copy was directed to take place no later than 16 February 2023 with the bundle due by 23 February 2023. The order is silent on a varied date for witness statements but it was later confirmed that everyone understood the date was 27 February 2023.

11. On 2 February 2023 Mr Collins wrote to R3 to update her on the outcome of the preliminary hearing. He advised witness statements had to be exchanged by 27 February 2023 and mentioned a bundle needed to be prepared but did not give a date. He advised any preparation of and / or completion of documents "will be in my hands". A visit was then arranged to the premises and to meet the respondents. Mr Collins did not attach a copy of Judge Ryan's order to R3 and I accept R2's evidence that he was not aware that disclosure of documents was due by 16 February 2023.

12. The visit took place on 10 February 2023. He met with R2 and R3 and took information to draft witness statements for them but not the other respondents. He was provided with their contact details.

13. On 12 February 2023 R3 sent Mr Collins some photographs of the Neath store. On 16 February 2023 R2 sent Mr Collins further information that had been requested by the claimants including recordings of disciplinary and grievance meetings and interviews of staff, staff contracts, letters and a shop video of the walk around. On 17 February 2023 R3 sent updated photos and a video of the Neath store. On 27 February 2023 Mr Collins emailed R2 and R3 with a request for disclosure from the claimants. He told them that the Tribunal had decided to hold a case management hearing on 1 March 2023 but they need not attend. What he did not tell R2 and R3 was that the hearing had been listed as he had failed to comply with orders for disclosure or produce a bundle and the claimants had had to apply for the hearing to be vacated. In fact Mr Collins told R2 and R3 something rather different:

The purpose of the hearing is for the Tribunal to be updated on the progress of the preparation of the case for the hearing starting on 06 March 2023. The legal representative for (the claimants) has raised issues as to whether the case will be ready for the hearing on 06 March 2023. However, the legal representative for (the claimants) has "shot herself in the foot" (metaphorically) by asking for documents (as set out above) late in the proceedings which she should have requested much earlier at the

"disclosure" stage of the case. I will update you after the hearing as to what the Tribunal Judge decides.

14. Between 12 – 23 February 2023 the claimants solicitor was repeatedly chasing Mr Collins for an update on disclosure, bundle and chronology cast list and list of issues. R2 and R3 were not aware of this at the time.

15. On 28 February 2023 R3 emailed Mr Collins with some of the information he had requested and an explanation as to why the other information could not be provided. This was sent on to the claimants by Mr Collins just before midnight.

16. On 1 March 2023 Mr Collins emailed R2 and R3 after the 1 March 2023 hearing which had taken place before Judge Jenkins. He did not attach a copy of the order which recorded the reason the hearing due to commence on 6 March 2023 had to be postponed was because the respondents had failed to comply with Judge Ryan's orders. Judge Jenkins postponed the final hearing and issued amended dates for compliance with the outstanding orders. R2 and R3 were told by Mr Collins that the Judge had decided to postpone the hearing as the cases were not ready as further time was needed for both parties to consider recently provided evidence. He advised the final hearing had been relisted to start on 10 July 2023.

17. On 13 May 2023 R3 had acute heart failure and was admitted to hospital later transferred to Royal Brompton Hospital in London. R3 was in hospital for 5 weeks during which time R2 stayed in London. R2 says they were reassured by Mr Collins that everything was in hand. R2 assumed that Mr Collins would be preparing their witness statements form the notes he had taken in the February visit.

18. On 15 June 2023 a further preliminary hearing took place before Judge Jenkins again. The order does not give reasons why, but the hearing was postponed again to 1-10 November 2023. Ms Quenby's witness statement sheds light on the reasons. Mr Collins had failed to comply with Judge Jenkins order from 1 March 2023 to provide disclosure, draft index, bundle and as such again the final hearing had to be postponed. Once again revised orders were made for the bundle, list of issues, chronology ad witness statements.

19. On 11 July 2023 Mr Collins emailed R2 to advise of the new November dates and set out some of the dates for compliance. What he did not tell R2 was that he had been due to provide disclosure by 6 July 2023 and was already in breach of the order. Mr Collins asked R2 for a further copy of the documents and audio recordings of the disciplinary and grievances hearings as he had not saved the copies that had been provided to him by R3 back in February.

20. The claimants' solicitor wrote to Mr Collins on 13 July 2023 raising further failures to comply with orders to which he failed to reply. Mr Collins failed to provide a draft bundle to the claimants' solicitor by 20 July 2023 so on 24 July 2023 and 2 August 2023 the claimants' solicitors wrote to the Tribunal making an application for the responses to be struck out due to the respondents' repeated failure to adhere to the Tribunal's orders.

21. R2 and R3 were not provided with copies of any of the correspondence or asked to provide instructions.

22. As to events after this, leading up to the strike out of the responses, R2's evidence, which I accept in full was as follows:

The Tribunal sent two letters dated 14 and 26 September asking for the respondents' to respond as the Tribunal was considering striking out the responses as they were not actively pursued [pages 316 to 318]. It asked for responses by 28 September, to which Mr Collins did nothing, and later by 3 October 2023. Again he did not take instructions at all and we had no awareness of the strike out application or that the Tribunal was considering striking out the claim. He finally responded on 3 October at 10.17 pm [page 319]. He again did not give a formal response other than to ask for a hearing to consider the applications.

On 4 October 2023, the Tribunal emailed the parties to advise that a hearing would take place on 11 October 2023 to consider the application for strike out [page 320].

At the subsequent hearing on 11 October 2023, the Tribunal ordered that the responses be struck out due to the respondents' failure to comply with orders/directions [pages 115-116]. The written reasons for the strike out confirm that this was due to the respondents' failure to make any substantive progress or comply with orders [Pages 117 - 125] at paragraphs 2.7.2 – 2.7.5 and 4.1 – 4.18.

From the written reasons, at paragraph 2.4, Mr Collins states the reasons for the non-compliance, which were directly related to his workload, and not through a failure of the respondents to provide instructions. At para 2.4.5 it is acknowledged by Mr Collins that the "the buck is with" him.

We only became aware that there was a problem when Mr Collins called us on 16 October 2023. He did not specifically state that the responses had been struck out, but instead said that the judge had taken the view that the respondents would not be required to give witness evidence at a final hearing in support of its position.

It was only following numerous calls from myself and (R3), questioning the position that Mr Collins admitted they he had failed to comply with the orders and that the responses to the claim had, in fact, been struck out.

23. R2 and R3 formally complained to R6 who agreed to continue to represent them at the final hearing despite expressing concerns about a conflict of interest. They are now pursuing a professional negligence action against R6.

24. On 31 October 2022 the claimants made without prejudice offers to settle (C - £33,600 and D - £24,800). The respondents declined the offers and made counter offers of 10% of the said offer amounts. R2 was advised that the claimants claims were defendable by R6.

25. R2 was asked about the decision to report C to the police. (There were two reports to the police firstly the theft allegation on 8 July 2021 and secondly the allegations regarding Person A on 11 April 2022 – see paragraphs 64 – 66 and 71-75 of the remedy judgment for C). Both of these reports were found to be acts of victimisation. In regard to the second report the Tribunal found it to be maliciously made, grotesque and one of the most shocking and spiteful acts of victimisation we have ever seen.

26. R2 told the Tribunal that it was his decision to make the first report having genuinely believed C guilty of theft. (R3 made the actual report see paragraph 64 of the remedy judgment for C). R2 did not explain why the second report had been made. R2 told the Tribunal that he was advised by Peninsula to use the police report as "leverage". R2 said they had been led by R6 and "led astray really badly" having never been in this situation before. R2 also told the Tribunal that the reason they did not settle the costs claims was because R6 told them the appeal had prospects of succeeding and so if they settled any matter they would use that as a defence in the civil proceedings.

R1- R5 means

27. Whilst R4 and R5 remain represented by those instructed for R1 – R3, they have not engaged in these proceedings.

28. The only evidence the Tribunal has regarding R4's means is a document setting out his monthly income as £2158.00. R4's bank account statement was for November 2023 and showed income of £2259.77 and outgoings of £2044.70. A statement from 1 – 8 January 2024 for a bills account showed income of £1349.33 and outgoings of £996.78.

29. There was a proposal for an IVA for R5 in the bundle but this was not signed. I had sight some bank account statements:

a) October to November 2023 showing payments in of £3286.05 and payments out of £3130.45;

b) November to December 2023 showing payments on of £2539.27 and payments out of £2780.49

c) December 2023 to January 2024 showing payments in of £1881.16 and payments out of £1895.28.

R1 – R3

30. In regards to R1 – the limited company – The financial the accounts show that it made a limited profit of £3,000 for the financial year at December 2023. I did not have any later company accounts. The 2023 accounts show that shareholders funds amounted to £71,393. R3 is registered at Companies House as a person of significant control with 75% or more of shares.

31. For 2022 – 2023 R2 and R3 appear to have very low incomes in terms of PAYE (R3 £15983.00 and R4 25866) but I note that they are likely to receive their income as dividends/ or in the capacity of R3 being the main

shareholder having regard to the company accounts. I note that R1- R3 is funding litigation against R6 and was represented by Counsel for the costs hearings. R2 explained this is being funded by an overdraft.

The Law

32. The power to award costs is set out in Part 13 of the Employment Tribunal Rules of Procedure 2024 ("the Rules"). The relevant Rules are 74, 76 and 78.

74 When a costs order or a preparation time order may or shall be made

(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,

(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.

76 The amount of the 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;

(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, 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.

78 When a wasted costs order may be made

(1) A wasted costs order is an order against a representative in favour of any party where that party has incurred wasted costs.

(2) The Tribunal may make a wasted costs order in favour of a party, whether or not that party is represented, and may also make such an order in favour of a representative's own client.

(3) A wasted costs order may not be made against a representative where that representative is representing a party in their capacity as an employee of that party.

(4) In this rule, and in rules 79 (effect of a wasted costs order), 80 (procedure) and 82 (ability to pay), "representative" means a party's legal representative or lay representative or any employee of such representative, but it does not include a person who is not acting in pursuit of profit with regard to the proceedings. A person acting on a contingency or conditional fee arrangement is considered to be acting in pursuit of profit.

(5) "Wasted costs" means costs incurred—

(a) as a result of any improper, unreasonable or negligent act or omission on the part of the representative, or
(b) which, in the light of any such act or omission occurring after they were incurred, the Tribunal considers it unreasonable to expect the receiving party to pay.

79 Effect of a wasted costs order

79. A wasted costs order may order a representative to pay the whole or part of any wasted costs of the party in whose favour the order has been made, or to disallow any wasted costs otherwise payable to the representative, including an order that the representative repay to their client any costs
which have already been paid. The amount to be paid, disallowed or repaid must in each case be specified in the order.

33. **Radia v Jefferies International Ltd [2020] IRLR 431, EAT** sets out the approach go be taken when considering a costs order. The first question for a tribunal considering a costs application is whether the costs threshold is crossed, in the sense that at least one of r 76(1)(a) or (b) is made out. If so, it does not automatically follow that a costs order will be made. Rather, this means that the tribunal may make a costs order, and shall consider whether to do so. That is the second stage, and it involves the exercise by the tribunal of a judicial discretion.

34. Vexatious conduct was defined by Lord Bingham in **Attorney General v Barker 2000 1 FLR 759, QBD (DivCt)** as '*the hallmark of a vexatious proceeding is… that it has little or no basis in law (or at least no discernible basis); that whatever the intention of the proceedings may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant, and that it involves an abuse of the process of the court, meaning by that a*

use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process'.

35. I was also referred to **Cartiers Superfoods Ltd v Laws[1978] IRLR 315** on the meaning of vexatious.

36. I was referred in the authorities bundle to **Yerrakalva v Barnsley Metropolitan Borough Council and another [2011] EWCA Civ 1255**. This was a case about withdrawal.

37. Wasted costs were considered by the Court of Appeal in **Ridehalgh v Horsefield [1994] Ch 205**. The principles are as follows:

38. When considering whether to make a wasted costs order, a three-stage test should be applied:

    (i) Has the legal representative of whom complaint was made acted improperly, unreasonably or negligently?
    (ii) If so, did such conduct cause the applicant to incur unnecessary costs?
    (iii) If so, is it, in all the circumstances, just to order the legal representative to compensate the applicant for the whole or part of the relevant costs?

39. 'Negligent' should be understood in an untechnical way to denote failure to act with the competence reasonably to be expected of ordinary members of the profession. In adopting an untechnical approach to the meaning of negligence in this context, the Court firmly discountenanced any suggestion that an applicant for a wasted costs order under this head need prove anything less than he would have to prove in an action for negligence.

40. The court has jurisdiction to make a wasted costs order only where the improper, unreasonable or negligent conduct complained of has caused a waste of costs and only to the extent of such wasted costs. Demonstration of a causal link is essential.

41. In this case, privilege has been waved between the respondents so there is no issue that R6 is hampered in conducting its defence of the wasted costs application.

42. **Godfrey Morgan Solicitors (in the matter of a costs order) v Cobalt Systems Ltd UKEAT/0608/10**, the EAT commented that wasted costs orders too often generate arguable grounds of appeal. The EAT then set out some suggested guidance steps namely, the Tribunal should have regard to the authorities, , the three stage test in Ridehalgh, procedure, privilege and ensuring there are clear reasons.

Conclusions

Grounds for the application for costs against R1- R5

The respondents have acted disruptively and otherwise unreasonably in the way

they have conducted these proceedings.

Repeated breaches of Orders of the Tribunal.

43. I have no doubt in concluding that the costs threshold has been met and that the repeated breaches of the orders outlined above mean there are grounds to consider making a costs order. However having regard to the evidence from R2, I consider that such costs are attributable to the conduct of R6. R2 sought to provide the information to their representatives and engage with the process. R1-R5 are not responsible for the repeated breaches of the orders.

The Rs reported C to the police after he submitted his first claim

44. I conclude that this costs threshold is made out as against R2 and R3. I consider that this conduct was vexatious, see the Tribunal's findings about the nature of this conduct (paragraphs 25-26 above). The conduct meets the test for vexatious conduct. I go on to consider whether I should exercise my discretion and I conclude I shall do so. I have weighed up the following factors in exercising my discretion.

45. Even if I accept that R2 and R3 were told to report C to the police by R6 as "leverage" this does not explain why the second police report was made. Further, given the remedy findings (see paragraphs 50, 53, 54, 56, 58, 60, 61, 65 – 66) the report was false advising that the claimant had admitted the allegations and the respondents had coincidentally discovered CCTV footage whereas in fact they had been trawling for footage to try and find reasons to dismiss the claimant. That the defences have been untested makes no difference here given the findings at paragraph 56 (that R4 was fully aware of the CCTV where the claimant was eating food and had taken no previous issue with it).

46. I agree and have taken into account that the claimants were young in age and on low incomes and had particular need for legal representation given the conduct of the respondents.

47. I have also taken into account the abilities to pay. I am not persuaded that the financial evidence before me should lead me to not exercise my discretion. There are funds to operate a well know fast food franchise and fund litigation against R6. There are substantial shareholder funds.

48. For these reasons costs attributable to dealing with the police reports are awarded in favour of C against R1-R3 on a joint and severable basis.

Failure to properly negotiate a settlement.

49. I do not consider the costs threshold to be met here. R1's 1 – 5 were advised by their representative to defend the claims. They acted upon that advice and reasonably believed that their representatives were acting in a professional manner in that representation. The representative was not truthful with R2 and R3 and misled and hid the actual extent of the breaches in orders which led to the responses being struck out.

Costs hearing had to be adjourned

50. I do not consider the costs threshold to be met as this costs hearing could not have proceeded in any event due to the time left at the end of the hearing and that remedy had to be reserved.

The defence to C's harassment related to disability claim had no reasonable prospect of success (recording) (Rule 76(1)(b))
The defence to D's sexual harassment claim had no reasonable prospect of success (Rule 76(1)(b))

51. I do not consider the costs threshold to be met in this regard as the respondents defences have not been tested as the responses were struck out.

The defence to D's PID detriment and s.27 EqA claims had no reasonable prospects of success (Rule 76(1)(b))
The defence to C's PID detriment and s.27 EqA 2010 claim had no reasonable prospect of success (Rule 76(1)(b))

52. I consider the costs threshold to have been made out and I exercise my judgment in making a costs award for the same reasons as set out in paragraph 45 above. The costs attributable to dealing with these claims for C and D are awarded against R1 – R3. I have taken into account the position with the response not being tested but in my judgment, these complaints differ as they were capable of being evaluated in the absence of a response unlike the harassment complaints. There are undisputable facts surrounding what was said to ACAS, timing of the police complaints and blatant false construction of the misconduct complaints against the claimants to meet the threshold. I exercise the discretion for the same reasons at paragraphs 49 – 50. The costs of dealing with these matters are awarded in favor of C and D claimants R1- R5 on a joint and several basis.

Grounds of application for wasted costs against R6

53. Has the legal representative of whom complaint was made acted improperly, unreasonably or negligently?

54. Having regard to the findings of Judge Ryan as well as the findings of fact above at paragraphs 11- 23 I find that the legal representative acted:

a) Improperly – by misleading R2 and R3 as to the reasons for the repeated postponements and then not telling them the responses had been struck out due to his conduct;
b) Unreasonably and negligently in the repeated failures to comply with orders and reply to the claimants solicitors.

55. It is beyond doubt that this conduct caused the claimants to incur to incur unnecessary costs. Mr McFarlane bravely sought to assert that the claimants would have incurred trial costs in any event and these were reduced because the responses were struck out. This does not negate the aborted counsel's fees and all the other costs associated with the repeated

breaches of orders, extra preliminary hearings and the constant chasing Ms Quenby had to engage in because of the representatives conduct.

56. It is just to order R6 to compensate the claimants for the costs incurred

57. The amounts of costs ands wasted costs shall be determined at a further costs hearing if they cannot be agreed. Separate orders shall be sent to the parties regarding this process.

Approved by:

Employment Judge S Moore

16 September 2025

JUDGMENT SENT TO THE PARTIES ON

17 September 2025

Katie Dickson
FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

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