



EMPLOYMENT TRIBUNALS

Claimant: Mr Adelanwa

Respondent: Environment Agency

Heard at: London South (by video)

On: 3 October 2025

Before: Employment Judge Evans
Mr W Dixon
Ms J Jerram

REPRESENTATION:

Claimant: In person

Respondent: Mr Morgan, solicitor

JUDGMENT

1. The amount of £825 paid as a deposit by the claimant must be paid to the respondent.
2. The amount of £275 paid as a deposit by the claimant must be refunded.
3. The claimant is ordered to pay the respondent's costs in the amount of £6090.75. The £825 referred to above counts towards the settlement of this order and the amount the claimant is ordered to pay the respondent is therefore £5265.75.

REASONS

Introduction

1. These are the Tribunal's reasons for its judgment given orally at the end of the hearing on 3 October 2025. The claimant requested these immediately after we had given our judgment.
2. Following the Tribunal's judgment of 23 May 2025 dismissing the claimant's claim ("the Liability Judgment"), the respondent made an application ("the Application") on 27 May 2025 (page 122) that:
 - 2.1. The deposit paid by the claimant be paid to the respondent pursuant to Rule 40(7) of the Employment Tribunal Procedure Rules 2024 ("the Rules");

2.2. The claimant be ordered to pay some of the respondent's costs on the basis that the claimant acted:

2.2.1. unreasonably and vexatiously in bringing proceedings against the respondent at all;

2.2.2. unreasonably in continuing to bring the claim, as well as in the manner in which proceedings were conducted.

3. The Tribunal made case management orders in relation to the hearing of the Application on 29 July 2025 and the Hearing took place today, 3 October 2025.
4. In accordance with the case management orders, the parties have liaised in relation to the preparation of a file for today's hearing ("the Bundle"). The Bundle contains 161 pages. References to page numbers in these reasons are to page numbers in the Bundle unless otherwise stated.
5. In addition to the Bundle, and in accordance with the case management orders, the claimant has provided representations running to 35 pages ("the claimant's representations"). The respondent has provided representations running to 15 pages ("the respondent's representations").
6. Within his submissions the claimant included an invitation to the Tribunal to reconsider its liability judgment under Rule 71. The Tribunal declined to accept that invitation and we gave our reasons for that separately before moving on to the Application.

The deposit order made on 1 May 2024

7. Employment Judge Aspinall made a deposit order on 1 May 2024 ("the Deposit Order"). By the Deposit Order EJ Aspinall ordered the claimant to pay £275 for each of 13 allegations.
8. The claimant paid £1100 on 3 June 2024. By an email of 1 June 2024 he indicated that the deposit was paid in respect of the allegations set out in Issue 2.1, Issue 2.7, Issue 2.8, and Issue 4.2.
9. The effect of the Deposit Order was that:
 - 9.1. The entirety of the claimant's complaints of direct race discrimination and harassment as pursued at the final hearing were subject to a deposit order;
 - 9.2. His complaint of victimisation was not subject to a deposit order.

The Application

10. The Application was explained in more detail in the respondent's representations. We do not set out the Application or the representations in full here but note in particular the following points made by the respondent in those documents:

- 10.1. So far as the Deposit Order was concerned, the Tribunal had decided the four allegations covered by it for substantially the reasons given in the Deposit Order;
- 10.2. More generally, the Tribunal should order costs because:
- 10.2.1. The effect of Rule 40(7) was that the claimant must be treated as having acted unreasonably for the purpose of Rule 74 in pursuing the allegations in respect of which the Deposit Order was made;
- 10.2.2. In any event, the claimant had acted vexatiously and/or unreasonably in commencing and conducting the claim generally (including by declining to discontinue it and through his conduct in preparing his case).
11. **Vexatious:** the respondent contended that the claimant pursued the claim out of spite towards Mr Neil Hull. It referred in this respect to the claimant saying at a preliminary hearing that the final hearing “will expose his lies”, to the multiple allegations made against Mr Hull in the claim form, to emails sent to Mr Hull and to the Tribunal’s reference at [96] to “an increasingly inflammatory and antagonistic attitude towards Mr Hull following the 2019-2020 performance review”, as well as to the claimant sending Mr Hull emails “whose tone was inappropriate and disrespectful...”
12. **Unreasonable conduct – pursuing a hopeless case he did not believe in:** the respondent submitted that the claimant pursued a case of race discrimination although he knew it to be hopeless. If he had genuinely believed race to be the reason for his treatment, he would have raised it in grievances. He “defended” Dr Jennings against his own allegation of harassment related to race.
13. **Unreasonable conduct – failure to recognise that his own conduct was the reason for his treatment:** the claimant was unreasonable in his failure to recognise that the source of his problems at work was his own conduct. The Tribunal’s own finding showed he was antagonistic and challenging. This highlighted his unreasonable behaviour and unreasonable decision to begin a claim which had no merit.
14. **Unreasonable conduct of proceedings:** the claimant fundamentally failed to appreciate the need for the parties to cooperate. He acted unreasonably in relation to the preparation of the bundle, which led to the respondent having to spend more time working on it than should have been necessary. He ignored an order of the Tribunal stating that the Tribunal would accept the bundle prepared by the respondent and exchanged witness statements cross referenced to his own bundle. It took the respondent’s representative a day to cross match the references. The Tribunal had to deal further with this issue in its letter of 8 April 2025 and despite multiple requests from the respondent the claimant only identified why the bundle was not agreed on the bank holiday weekend before the beginning of the hearing. The claimant’s unreasonable conduct caused the respondent to spend unnecessary time working on the bundle.

15. **Costs warning letters:** drop hands settlement offers were made to the claimant on 8 May 2024 (p103) (after the Deposit Order had been made) and in April 2025 (page 111) (after witness statements had been exchanged) explaining in detail why in the respondent's view each allegation would fail.

The claimant's response to the Application

16. The Claimant's Representations began by thanking the Tribunal and stating that the full hearing was "balanced and fair, achieving the Overriding Objective". We do not set out his submissions in full but they may be reasonably summarised as saying that:

- 16.1. Costs do not automatically follow from the fact of a deposit order;
- 16.2. So far as the threshold test is concerned, as a litigant in person he should not be judged by the standards of a professional representative. In particular, a litigant in person assessing a discrimination claim may find it difficult to know whether the claim has real prospects of success;
- 16.3. So far as the second stage of the test is concerned, the claimant referred to a number of authorities which recognise the need to look at the picture as a whole and the relevance of costs warnings;
- 16.4. **Issue 2.1** [*what Mr Hull said to Mr Schmidt*]: The claimant had pursued complaints of real concern in the workplace in a reasonable manner, particularly given his concern about the use of the word "hustle". His complaints had merit. Mr Hull had apologised during his cross-examination and, if he had apologised earlier, time and expense would have been saved;
- 16.5. **Issue 2.7** [*dismissal of the grievance*]: The claimant submitted that it had been reasonable for him to pursue a complaint in respect of the grievance.
- 16.6. **Issue 2.8** [*the organogram issue*]: The claimant submitted that the complaint had merit.
- 16.7. **Issue 4.2** [*What Dr Jennings said to the claimant and what he subsequently wrote*]: The claimant had not understood that in order to be harassment the unwanted conduct had to relate to a protected characteristic and did not dispute that he had not believed Dr Jennings had done anything related to race. However, it had been reasonable of him to pursue the claim.
- 16.8. **Issue 6.1**: [*Victimisation – non-renewal of authorisation certificate*]: The claimant referred to the evidence before the Tribunal and submitted it was reasonable for him to pursue the claim.
- 16.9. **Issue 6.2**: [*Victimisation – required to attend meeting by Mr Edlin*]: The claimant referred to the evidence before the Tribunal and submitted it was reasonable for him to pursue the claim.

17. The claimant denied have acted vexatiously. He had indicated a willingness to be involved in a mediation with Mr Hull. He had not acted disruptively during proceedings. He had not known how to deal with the settlement offers and DEFRA had indicated concern about a clause in the settlement letter.

The Law

Deposit orders

18. Rule 40 of the Rules provides where relevant as follows:

- (1) *Where at a preliminary hearing the Tribunal considers that any specific allegation or argument in a claim, response or reply has little reasonable prospect of success, it may make an order requiring a party ("the depositor") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument ("a deposit order")...*
- (3) *The Tribunal's reasons for making the deposit order must be provided with the order and the depositor must be notified about the potential consequences of the order...*
- ...(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.*

19. The effect of Rule 40(7)(a) is that there is a presumption that the pursuit of the matter which is the subject of the deposit order is unreasonable conduct for the purposes of Rule 74. This of course brings with it the possibility of an adverse costs order. It is for the losing party – in this case the claimant – to rebut the presumption that the pursuit of the claim was unreasonable. If the depositor fails to rebut the presumption, the Tribunal must consider making a costs order (Rule 74(2)).

20. Simler J described the effects of a deposit order as follows in Hemdan v Ishamail [2017] IRLR 228:

"10....if the money is paid and the claim pursued, it operates as a warning, rather like a sword of Damocles hanging over the paying party, that costs might be ordered against that paying party (with a presumption in particular circumstances that costs will be ordered) where the allegation is pursued and

the party loses. There can accordingly be little doubt in our collective minds that the purpose of a deposit order is to identify at an early stage claims with little prospect of success and to discourage the pursuit of those claims by requiring a sum to be paid and by creating a risk of costs ultimately if the claim fails. That, in our judgment, is legitimate, because claims or defences with little prospect cause costs to be incurred and time to be spent by the opposing party which is unlikely to be necessary. They are likely to cause both wasted time and resource, and unnecessary anxiety. They also occupy the limited time and resources of courts and tribunals that would otherwise be available to other litigants and do so for limited purpose or benefit...

21. The claimant will have their deposit refunded:

- 21.1. if they withdraw the specific allegation or argument before a hearing on the merits;
- 21.2. if the Tribunal does not decide the allegation or argument against them; or
- 21.3. if it does decide it against them but for reasons different from those given in the deposit order.

Costs generally

22. Rule 74(2) sets out the circumstances in which a Tribunal must consider making a costs order:

- (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*

23. It is important to note that whilst the Tribunal must consider making a costs order if one of the thresholds provided for by Rule 74(2) is crossed, it is not required to make such an order (Rule 74(1)).

24. The amount of a costs order is dealt with by Rule 76(1):

- (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;*

...

The procedure to be followed by the Tribunal

25. The Tribunal must follow a three-stage process following an application for costs:

- 25.1. First, it must make findings about the paying party's conduct. It must consider whether on those findings one or more of the statutory thresholds in Rule 74 are met. In doing so it must identify which aspects of the conduct fulfilled which part of the Rule 74 test;
- 25.2. Secondly, if the Rule 74 threshold is met, the Tribunal will consider whether to exercise its discretion to award costs;
- 25.3. Thirdly, a Tribunal may proceed to consider the amount of the award payable.

The first stage: the assessment of the party's conduct/prospects of success

26. **Unreasonable conduct:** In assessing whether a party or representative has acted unreasonably, the Court of Appeal in Yerrakalva v Barnsley Metropolitan Borough Council and another [2012] ICR 420 held that the vital point in exercising the discretion to order costs is to look at the whole picture. The Tribunal has to ask whether there has been unreasonable conduct by the paying party in bringing, defending or conducting the case and, in doing so, identify the conduct, what was unreasonable about it, and what effect it had.

27. The Tribunal must not judge a litigant in person by the standards of a professional representative.

28. **Vexatious:** vexatious conduct was defined by Lord Bingham in Attorney General v Barker [2000] 1 FLR 759 and approved in the context of costs in the Employment Tribunal by the Court of Appeal in Scott v Russell [2013] EWCA Civ 1432, CA as follows:

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.

The Second Stage: exercise of the discretion

29. The costs regime set out in the Rules 2024 is tightly prescribed. Costs do not follow the event in the Tribunal and awards of costs are very much the exception and not the rule.

30. The power to award costs is discretionary. The ordinary principles applicable to the exercise of a discretion apply to the exercise of this discretion too. The Tribunal

should remember that the purpose of an award of costs is to compensate the party in whose favour the order is made. Questions of punishment are irrelevant to the exercise of the discretion.

31. **Costs warnings:** There is no requirement for the paying party to have received a costs warning before a costs order is made but the fact of one may be a relevant factor in the exercise of the Tribunal's discretion.
32. **Calderbank principle:** this principle, whereby if a party makes an offer "without prejudice save as to costs" which is not bettered they are entitled to their costs from the date of the expiry of the offer, does not apply in the Employment Tribunal. However, that such an offer has been rejected may be relevant both to the threshold question and to the exercise of the Tribunal's discretion.
33. **Ability to pay:** The Tribunal may have regard to the paying party's ability to pay in deciding whether to make a costs order (Rule 82). If a party asks for its means to be considered, the Tribunal should state whether and how it has done so. The Tribunal is not required to limit costs to an amount that the paying party can afford, provided there is a realistic prospect that the party might at some point in the future be able to afford to pay the amount ordered.

The Third Stage: The amount of any costs order

34. An award of costs should be compensatory not punitive. Costs should be limited to those "reasonably and necessarily incurred". The conduct of the receiving party may also be relevant to the amount of a costs order. The amount ordered must obviously reflect the actual costs incurred. The Tribunal must explain on what basis it arrives at a sum.
35. When making a costs order on the ground of unreasonable conduct, the discretion of the tribunal is not fettered by any requirement to link the award causally to particular costs which have been incurred as a result of specific conduct that has been identified as unreasonable (McPherson v BNP Paribas (London Branch) [2004] EWCA Civ 569, [2004] ICR 1398). In Yerrakalva Mummery LJ stated (at [41]):

The vital point in exercising the discretion to order costs is to look at the whole picture of what happened in the case and to ask whether there has been unreasonable conduct by the claimant in bringing and conducting the case and, in doing so, to identify the conduct, what was unreasonable about it and what effects it had.

36. When having regard to a party's ability to pay the Tribunal should balance that factor against the need to compensate the other party who has unreasonably been put to expense. The former does not necessarily trump the latter, but it may do so.
37. When assessing a bill of costs, it may be useful to consider (but there is no requirement to do so) the civil courts' Guide to the Summary Assessment of Costs.

38. VAT should not be included in a claim for costs if the receiving party is able to recover the VAT as input tax.

The deposit order and the Liability Judgment

39. We have first considered whether in the Liability Judgment we decided the specific allegations for “substantially the reasons given in the deposit order” (Rule 40(7)).

40. **Issue 2.1** [*what Mr Hull said to Mr Schmidt etc*]. Paragraph 10 of the Deposit Order can reasonably be construed as covering this issue because it relates to the claimant’s management style and provision of reports. It finds the allegation has little reasonable prospect of success because of documents showing multiple contemporaneous complaints about the claimant’s communication style. At [186] of the Liability Judgment we found that the reason for the treatment (which was not factually disputed) was not significantly or materially influenced by race but rather reflected how Mr Hull saw his relationship with the claimant at the time in light of his behaviour (when dealing with others) and how he saw the claimant dealing with other people at work. Overall, therefore, the Deposit Order predicted this allegation would fail because of findings about how the claimant dealt with others and that is substantially the reason we decided the allegation against the claimant.

41. **Issue 2.7** [*dismissal of the grievance*]. The Deposit Order did not give reasons for making a deposit in respect of this allegation. The respondent submitted that EJ Aspinall should be taken to have accepted the respondent’s submissions contained in its submissions in relation to the making of the Deposit Order because a deposit order was made in relation to this allegation and because EJ Aspinall wrote at [9] of the Deposit Order:

After careful consideration of the submissions and available documentation, I have determined that 13 of the Claimant’s allegations have limited reasonable prospects of success at this stage...

42. We disagree. That is the introduction to the decision on the deposit application, not the reasons for making it. We conclude, therefore, that our reasons for rejecting the allegation in the Liability judgment were not “substantially the same” as the reasons given in the Deposit Order. No reasons were given in the Deposit Order in relation to this Issue.

43. **Issue 2.8** [*the organogram issue*]. Paragraph 14 of the Deposit Order deals clearly with this issue stating:

The claimant’s removal from a team organogram after being moved to a new team seems standard practice rather than evidence of mistreatment based on race. The merits of this as a stand-alone claim of discrimination appear doubtful.

44. Our reasons in the Liability judgment at [144], [180.4], [185.5] and [186.8] rejected the allegation for “substantially the same” reason: in summary, we concluded that the organogram simply reflected the factual reality of who was working where at the time it was prepared.

45. **Issue 4.2** [*What Dr Jennings said to the claimant and what he subsequently wrote*]: Paragraph 12 of the Deposit Order deals with this issue stating:

For allegations about the claimant's former manager re-characterizing past conduct issues as more serious, there is little indication of how this could satisfy the high bar for demonstrating unlawful discrimination or harassment absent other compelling evidence.

46. Our reasons in the Liability judgment at [190], [191] [192] to [194] rejected this allegation for “substantially the same” reason. We concluded that the impugned treatment was not of a quality to have the proscribed purpose of effect required by section 26(1)(b) and that it did not relate to race. Indeed we noted that the claimant had apparently accepted this latter point during his cross-examination of Mr Hull.
47. Our reasons in the Liability Judgment for rejecting the allegations in respect of which the Deposit Order were made were, therefore, substantially the same in respect of three of the four allegations.
48. Having paid careful attention to the claimant’s oral submissions, we conclude that he has not rebutted the presumption that he acted reasonably in pursuing these three allegations. His submissions relevant to this issue really did little more than suggest, albeit indirectly, that the Tribunal made the wrong decision and that the allegations had merit (hence his invitation to us to reconsider the Liability Judgment). The deposit paid in relation to those three allegations must therefore be paid to the respondent pursuant to Rule 40(7). The deposit paid in respect of the other allegation must be refunded to the claimant pursuant to the same Rule.
49. Further, the effect of Rule 40(7)(a) is that the claimant is to be treated unreasonably in pursuing the three allegations we have identified and so the Tribunal must consider whether to exercise its discretion to make an award of costs in relation to that.

Findings and conclusions in relation to the costs application

Stage one – the claimant’s conduct/no reasonable prospects of success

50. Our conclusion above is to the effect that the claimant acted unreasonably in pursuing **Issue 2.1** [*what Mr Hull said to Mr Schmidt etc*], **Issue 2.8** [*the organogram issue*] and **Issue 4.2** [*What Dr Jennings said to the claimant and what he subsequently wrote*]. We need make no further findings in relation to the pursuit of those issues at Stage one.
51. The question now, therefore, is whether the claimant acted vexatiously or unreasonably in relation to any of the remaining Issues: **Issue 2.7** [*dismissal of the grievance*], **Issue 6.1** [*Victimisation – non-renewal of authorisation certificate*], **Issue 6.2** [*Victimisation – required to attend meeting by Mr Edlin*] and **Issue 6.3** [*Victimisation - Mr Edlin saying claimant was in breach of the respondent’s code of conduct*].

52. The respondent's submissions in relation to vexatiousness were focused on the claimant's attitude towards Mr Hull. We have concluded that the way in which the claimant pursued his claim was not "vexatious". However misjudged his analysis of the merits of his allegations against Mr Hull may have been, we conclude that the claimant did have an honest belief that Mr Hull had discriminated against him because of his race. It could not be said that the allegations had little or no basis in law (they were of course at most the subject of a deposit order, rather than being struck out). We conclude that the effect of them being pursued was not to subject the respondent to inconvenience or harassment. They were not being pursued for an improper purpose which amounted to an abuse of process. Rather they were being pursued in an ill judged pursuit of what the claimant regarded as justice.
53. Turning to unreasonable conduct in pursuing the victimisation complaints and Issue 2.7 (dismissing the grievance), in his submissions, Mr Morgan suggested that the claimant had knowingly pursued a case which he did not believe in. We find that that was not the case in respect of the victimisation complaints or issue 2.7. So far as Issue 2.7 is concerned, our analysis in the Liability Judgment of the failure to consider an allegation of race discrimination made in a document relevant, but not central to, the claim is relatively nuanced and we do not think the claimant was in this respect pursuing a claim he did not believe in. So far as the victimisation complaints are concerned, the claimant was seeing events through the prism of having presented a tribunal claim and his view that the various subsequent matters of which he complained were a consequence of that. Whatever the merits of his arguments, we find that he did believe in them.
54. Mr Morgan also suggested that the claimant's conduct was unreasonable because he failed to recognise that his own conduct was the reason for the treatment of which he complained. We accept that in broad terms Mr Morgan's submission reflects our own conclusions in the Liability Judgment: that the claimant's misfortunes stemmed from his own behaviour. However, again bearing in mind that we are simply considering the victimisation complaints and Issue 2.7, we do not find that it was unreasonable for the claimant to fail to recognise this. It would have required a degree of self-knowledge that very few if any unrepresented parties demonstrate.
55. Mr Morgan further submitted that the claimant was unreasonable in his conduct of proceedings, particularly in relation to the preparation of the bundle, and the cross-referencing to the bundle in his witness statement. We find that the claimant was indeed unreasonable in this respect. We accept that an unrepresented claimant will generally be unlikely to take the respondent's word for it being necessary to do certain preparatory steps such as preparing the bundle in a particular way. However, the claimant was unreasonable in the way in which he sought to prepare the bundle and in his failure to explain to Mr Morgan what the issues with the bundle were from his perspective given that, on two separate occasions, Employment Judges gave the claimant a clear steer. The claimant had no reason to regard the directions given by the Employment Judges with the same degree of suspicion that he might have regarded what Mr Morgan said to him, however misguided. The unreasonableness was rather illustrated by the minimal problems that the claimant identified with the bundle on the first day of the liability hearing. The claimant's unreasonable conduct in relation to the preparation of the bundle undoubtedly

caused the respondent to incur additional costs that it would not have incurred if the claimant had behaved in a reasonable fashion.

56. The threshold for an award of costs has therefore been passed:

- 56.1. Firstly, in respect of three of the four allegations which were covered by the Deposit Order;
- 56.2. Secondly in respect of the claimant's conduct in relation to the preparation of the bundle.

Stage two – the Tribunal's discretion to award costs

57. The Tribunal has a wide discretion in relation to the award of costs. We have taken into account the following matters in deciding whether to exercise it:

- 57.1. First, whilst clearly an intelligent and educated man, the claimant is an unrepresented litigant. Whilst the threshold test remains the same for unrepresented litigants, we think that the claimant's lack of representation and so inevitable lack of objectivity in relation to his claim is relevant to the exercise of our discretion.
- 57.2. Secondly, the claimant claims were discrimination claims. This is relevant to our exercise of our discretion for two reasons. First, discrimination is a societal evil and we wish to be careful not to proceed in a way which will deter other claimants with arguable cases from pursuing them at all. Secondly, given the nature of discrimination in modern society, it is often extremely difficult to prove. As in this case, it requires a claimant to find evidence from which the Tribunal could deduce that the reason for the treatment complained of was discriminatory.
- 57.3. Thirdly, there is the question of the claimant's means. In light of the brief oral evidence he gave, and the documents contained in the Bundle, we conclude that the position in relation to his means can reasonably be summarised as follows: his income exceeds his outgoings (excluding savings) by about £350 a month; he has cash savings of just over £5,000; he has equity in the flat which he owns between around £15,000 and £40,000. However, access to such equity is uncertain as is its amount. We conclude that he can therefore pay up to around £7,000 without there being any question of him, for example, having to re-mortgage his house.
- 57.4. Fourthly, although the claimant has lost all of his claims, and by a significant margin, we conclude that he did have a genuine if distinctly unfocused sense of having been discriminated against because of race. We made fairly detailed findings at paragraph 184 of our reasons which might reasonably be summarised as the respondent not pursuing allegations of bias and prejudice as strenuously as some employers might have done and having not been keen to consider the issue of racism if that was not strictly speaking required by the grievance raised by the claimant. Further, a manager of the respondent expressed a view that the respondent had not taken into account

the claimant's different culture and background. These findings are sufficient for us to conclude that the claimant had a genuine if vague sense of being discriminated against, even though that was not justified by the facts when they are properly examined.

57.5. Fifthly, whatever the claimant's subjective sense of what happened, as considered above, in relation to how he had been treated, he pursued the complaints which were the subject of the Deposit Order as analysed above after receiving the opinion of an Employment Judge that the claim had little reasonable prospect of success. This should have caused him to temper his analysis of his claim, at least in respect of those three allegations which we have rejected for substantially the same reasons as the Employment Judge who made the Deposit Order. He would if acting reasonably have been able to see that he was, in effect, receiving advice from a highly experienced and independent employment lawyer in relation to the prospects of success of his claim.

57.6. Sixthly, there is the question of the drop hands "without prejudice offers subject to costs" which were made. It is true that their analysis in the broadest of terms of the claimant's prospects of success was not far removed from that contained in the Liability Judgment. However, it is in our experience very difficult for an unrepresented claimant to engage with legal analysis provided by the representative of the other party because they simply do not have the legal knowledge necessary to come to any sensible view on the merits of the analysis with which they are presented. It is obviously different when a party has a professional representative.

58. Taking these matters in the round, we have decided to exercise our discretion to award costs. However, even in respect of the allegations in respect of which the reasons for rejecting them contained in the Liability Judgment were substantially the same as those given in the Deposit Order, we do not exercise our discretion to award any costs in respect of the period prior to the deposit order being made.

Stage three – the amount of costs to be awarded

59. The award we are going to make all relates to unreasonable conduct that we have found.

60. The Tribunal has of course to ask whether there has been unreasonable conduct by the paying party in bringing, defending or conducting the case and, in doing so, identify the conduct, what was unreasonable about it, and what effect it had.

61. We conclude that all the costs shown in the costs schedule were reasonably and necessarily incurred and so take no issue with the overall total shown in the costs schedule. It is not a case where hourly rates or counsel's fees are in any way out of line with what is permitted. The question, therefore, is what proportion of those costs the claimant should be ordered to pay.

62. The amount of costs incurred *after* the making of the deposit order was £21,063. We conclude that the unreasonable conduct of the claimant in relation to the

preparation of the Bundle and the cross referencing of the witness statement caused the respondent to incur an additional ten hours of costs and so we order the claimant to pay 10 hours at £110 in relation to that. That is to say an amount of £1100.

63. That leaves costs of £19963 incurred after the making of the Deposit Order. We think find that respondent's costs would have been reduced generally by 25% if 3 of the 7 allegations had not been pursued. Obviously, if we had adopted a simple pro rata approach, 3 of the 7 allegations not being pursued would have resulted in a reduction of more than 25% in costs. However, these are not things which are susceptible to a simple pro-rata calculation. The reality is that a certain amount of work will always need to be done whether there is one allegation or seven. We think that taking things in the round, taking into account the £1100 we have separately ordered as set out above, and given that the actual cost schedule does not give us a basis on which to make a more precise calculation (and we make no criticism of Mr Morgan by saying that), 25% is the appropriate percentage. That gives a further amount of £4990.75. When £1100 is added to this the total costs award is £6090.75. This will be reduced by £825 of the deposit paid and so the amount the claimant will need to pay the respondent is £5265.75.

Approved by:

Employment Judge Evans

6 October 2025

**Sent to Parties.
10 October 2025**

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.