



EMPLOYMENT TRIBUNALS

Claimant: Ms D Johnson

Respondent: Prysmian Cables and Systems Ltd

RESERVED JUDGMENT ON COSTS (PARTIAL)

1. The claimant's allegation that the letter dated 5 December 2023 was the "last straw" had no reasonable prospects of success from the outset of proceedings.
2. The claimant acted unreasonably in the way that the proceedings have been conducted by reason of her comments during the liability hearing about the eligibility of the cleaners to work in the UK.
3. A one day costs hearing will be listed to determine whether it is appropriate to order that the claimant be responsible for any of the respondent's costs, and if so how much.

REASONS

Background, Procedure and Issues

1. At a hearing from 26 February 2025 to 7 March 2025 I dismissed the claimant's claims for constructive unfair dismissal and wrongful dismissal, giving oral reasons for doing so at that hearing.
2. Subsequently, the respondent made a costs application dated 7 April 2025 from the respondent. The claimant has subsequently made a cross-application for costs dated 18 July 2025, which the respondent has responded to by response dated 1 August 2025.
3. The grounds for the respondent's costs application are:
 - a. That the claims had no reasonable prospects of success (pursuant to Rule 74 (1)(b) of the Employment Tribunal Procedure Rules 2024 ("the ET Rules"); and/or
 - b. That the claimant acted unreasonably and vexatiously in the

bringing of the proceedings and the way that the proceedings have been conducted (Rule 74(1)(a) of the ET Rules).

4. The grounds for the claimant's cross-application for costs are that the claimant considers the respondent's application for costs to be an attempt to punish the claimant and to deter future claims from present employees, which is abusive. On that basis, they indicated that if the respondent persisted with its application necessitating further correspondence or a hearing, the claimant would seek her costs for that work. The claimant submitted that the respondent had acted unreasonably and vexatiously in its conduct of the proceedings by bringing and maintaining its application for costs. Whilst this was not referred to in my original orders (given that the application had not been made at that stage), given that both parties have provided written representations to me on this, both parties have therefore had a reasonable opportunity to make representations and therefore I include in these Reasons my conclusions on this point.
5. In its costs application, the respondent requested that the matter be determined on the papers. I sought the claimant's views on this and her position was that she was happy for the merits of the application to be dealt with on the papers but that, if the respondent's application was found to have merit, she would request a hearing.
6. I decided that it was in the interests of justice for me to consider some aspects of the costs application without a hearing but that, if I found the threshold for costs to have been met, the claimant ought to have the chance to give evidence before a decision was made as to whether (if it is found that the claim had no reasonable prospects of success) she ought to have known that, whether to exercise my discretion to award costs and if so how much. I therefore confirmed to the parties by letter dated 30 June 2025 that at this stage I would consider:
 - a. Whether the claims had no reasonable prospect of success (and, if so, from what date – i.e. from the outset or from a defined point before Judgment issued)?
 - b. Whether the claimant acted unreasonably and/or vexatiously in the bringing of the proceedings and/or the way that the proceedings have been conducted (and, if so, in what way and on what date(s))?
7. For the avoidance of doubt I confirmed to the parties that I would not at this stage consider:
 - a. Whether the claimant knew, or ought reasonably to have known, that the claim had no reasonable prospects of success (if it is found that it did not);
 - b. If the threshold for costs has been met, whether the Tribunal considers it appropriate to exercise its discretion to award costs, having regard to all the circumstances; and
 - c. The amount of any costs award and/or the percentage to be awarded in the event that it potentially exceeds £20,000.

I considered that these matters should be addressed at a hearing if relevant, so that the claimant could give evidence.

8. Both parties were invited to make any further submissions in writing, which they did by way of the claimant's response (and cross-application for costs) dated 18 July 2025, and the respondent's response to the cross-application for costs dated 1 August 2025.
9. Although the claimant was legally represented at the liability hearing, she is now a litigant in person, however Mr Macmillan (who represented her at that liability hearing) prepared some written submissions for her on a pro bono basis.

The respondent's costs application

10. The basis upon which the respondent argues that the claims had no reasonable prospects of success are:
 - a. That the claimant pursued factual allegations which were "plainly incorrect and bound to fail", in particular in relation to her workload, her overtime and her decision to remain in employment after indicating that she may resign.
 - b. That the allegations were in most cases easily disproved, yet despite receiving a number of costs warnings during the proceedings, she failed to reconsider her allegations. The respondent described the allegations as spurious and bound to fail. I will not consider this at this stage as I see this as not an assertion about prospects themselves, but about what the claimant ought to have known about prospects given the costs warnings.
 - c. That, even if the claimant's complaints had been accepted, they did not amount to a breach of the implied term of trust and confidence.
 - d. That it was inevitable that the Tribunal would decide that the claimant had affirmed her contract as her own evidence was that she decided to resign on 1 February 2023 but did not do so until 5 December 2023.
 - e. That the claimant had no reasonable grounds to believe that her complaints were likely to be successful. This does not form part of the matters I am considering at this stage and would be addressed at a hearing if I find that the claims did have no reasonable prospect of success.
 - f. The allegation made by the claimant about the alleged last straw (the content of a letter dated 5 December 2023) was demonstrably false and the claimant said in evidence that there was "nothing wrong" with it.
 - g. The respondent said that the letter was entirely legitimate and could not properly constitute the last straw
 - h. The respondent further alleged that the claimant had no reasonable prospect of showing that the resignation was caused by that "last straw" as she had indicated her intention to resign on 1 February 2023.
 - i. Even if she had been constructively dismissed, she had no reasonable prospect of being awarded compensation because of conduct after her resignation on 13 December 2023 and because of comments made during the hearing about the respondent's cleaning contractors.

11. In relation to unreasonable and/or vexatious conduct, the respondent argues as follows:
 - a. That even if there was no fabrication or deceit, her pursuit of misconceived complaints was unreasonable conduct. The respondent says that the claimant must have known, or ought to have known, that her claims were unmeritorious [This will not be addressed at this stage]. The respondent says that pursuing her claim when it was evident they had no reasonable prospects was unreasonable and vexatious.
 - b. That the claimant was aware she intended to resign on 1 February 2023 and yet pursued a constructive dismissal complaint relating to matters postdating that date, unnecessarily extending the length of hearing.
 - c. The claimant had made comments prior to her resignation saying she would take the respondent “to the cleaners”.
12. The respondent issued costs warnings to the claimant as follows:
 - a. In their Grounds of Resistance;
 - b. By letter dated 1 March 2024;
 - c. By letter dated 10 July 2024, by which time the claimant was legally represented; and
 - d. By letter dated 3 March 2025, part way through the hearing.
13. I do not recite all of the facts and conclusions from the liability judgment here, however insofar as they are relevant to my conclusions I set them out against each matter below.

Law

14. Rule 74 of the ET Rules provides (so far as relevant):
 - (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) *the claim, response or reply had no reasonable prospect of success, or*
 - c) *....*

These are sometimes referred to as the threshold tests for an award of costs.

15. Rule 75 of the ET Rules provides:

- (1) *A party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties.*
 - (2) *The Tribunal must not make a costs order or a preparation time order against a party unless that party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order).*
16. Rule 76 of the ET Rules addresses the amount of a costs order, as follows (so far as relevant):
 - (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.
 - c)
 - d)
 - (2)
 - (3) *A costs order under sub-paragraphs (b) to (d) of paragraph (1) may exceed £20,000.*
17. Rule 82 of the ET Rules provides:

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.

Therefore the Tribunal has some discretion as to whether or not to take into account the claimant's ability to pay. However, if the Tribunal does not take it into account, it should give its reasons for not doing so (**Jilley v Birmingham and Solihull Mental Health NHS Trust UKEAT/0584/06 and UKEAT/0155/07**).
18. Although the threshold tests are the same whether or not a party is legally represented, a litigant in person should not be judged by the standards of a professional representative (**AQ Ltd v Holden [2012] UKEAT/0021/12/CEA**).
19. When considering the question of unreasonable conduct, "unreasonably" should be given its ordinary English meaning and the Tribunal should take into account the nature, gravity and effect of the party's conduct (although not necessarily separated into individual sections) (**Dyer v Secretary of State for Employment [1983] UKEAT 183/83** and **Yerrakalva v Barnsley Metropolitan Borough Council and anor 2012 ICR 420, CA**). A party's

conduct as a whole may amount to unreasonable conduct and making unsubstantiated allegations is capable of amounting to unreasonable conduct (**Sahota v Dudley Metropolitan Borough Council EAT 0821/03**). Every aspect of the proceedings is relevant, however the Tribunal should bear in mind that there may be more than one reasonable course of conduct to take (and must not substitute its view) (**Mrs S Solomon v University of Hertfordshire and Hammond UKEAT/0258/18/DA**).

20. “Vexatious” amounts to more than being misguided (**AQ Ltd v Holden 2012 IRLR 648, EAT**). Vexatious conduct may occur where a hopeless claim is pursued out of spite to harass an employer or for an improper motive (**ET Marler Ltd v Robertson [1974] ICR 72**). The effect of the conduct is also relevant: as per Lord Bingham CJ in **A-G v Barker [2000] 1 FLR 759**:

“Vexatious” is a familiar term in legal parlance. The hallmark of a vexatious proceeding is in my judgment 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”.

21. The key question is not whether a party believed their claim had prospects of success, but whether they had reasonable grounds for doing so (**Scott v Inland Revenue Commissioners 2004 ICR 1410, CA**). The Tribunal should assess whether the claim had no reasonable prospect of success based on the information that was known or reasonably available at the time (and not take into account information that only came to light at a later stage). Even if there are disputes of fact, that does not mean that the Tribunal cannot conclude that there were no reasonable prospects of success at the outset (or that the claimant should reasonably have known that), as this will depend on what the claimant knew or ought to have known what the true facts were (**Radia v Jefferies International Ltd EAT 0007/18** and **Vaughan v London Borough of Lewisham and ors 2013 IRLR 713 EAT**). In **Millin v Capsticks Solicitors LLP [2014] UKEAT/0093/14** it was held (at paragraph 67) that:

“[w]here a claim is truly misconceived and should have been appreciated in advance to be so, we see no special reason why the considerable expense to which a Respondent will needlessly have been put (or a claimant in a case in which a response is misconceived) should not be reimbursed in part or in whole”.

22. The question of whether a claim had no reasonable prospects of success may overlap with the question of unreasonable conduct (**Opalkova v Acquire Care Ltd [2021] UKEAT/0056/21**). There are three key questions:
- a) Did the complaints have no reasonable prospects of success?
 - b) If so, did the claimant know or appreciate that?
 - c) If not, ought they reasonably to have known or appreciated that?

The Tribunal must consider each claim brought by the claimant.

23. Where the threshold test under Rule 74 of the ET Rules has been met for an award of costs, it is still necessary for the Tribunal to decide whether to exercise its discretion in favour of the receiving party, having regard to all the circumstances (**Yerrakalva, above**). In essence it is a three stage test:
- Has the costs threshold been met?
 - Does the Tribunal consider it appropriate to exercise its discretion to award costs, having regard to all the circumstances?
 - If so, what award is made (or what percentage of the party's total costs is to be awarded if the matter is to be referred on for detailed assessment)?
24. Whether or not a costs warning letter was sent is relevant but not determinative: the weight it should be given will depend on the circumstances of the case (**Vaughan, above** and **Rogers v Dorothy Barley Schol EAT 0013/12**). Where a party is disabled, it will be relevant to consider the impact of that disability on their conduct.
25. Costs are intended to be compensatory rather than punitive, and are limited to those reasonably and necessarily incurred by the other party. They are the exception and not the rule (**Yerrakalva, above**). Costs do not automatically follow where a party has given false evidence knowingly: all circumstances including the impact of the dishonesty and costs incurred should be considered (**Kapoor v Barnhill Community High School Governor EAT 0352/13**).
26. A precise link between the unreasonable conduct and the costs incurred is not required (**D'Silva v NATFHE [2009] UKEAT 0126/09** and **Salinas v Bear Stearns International Holdings Inc and anor 2005 ICR 1117, EAT**). In **Sud v Ealing London Borough Council 2013 ICR D39, CA**, it was held that the process did not entail a detailed or minute assessment, but rather a broad-brush approach taking into account the relevant circumstances.
27. When taking into account ability to pay, this should include assets as well as income. A costs award can be made even where a party cannot afford to pay it immediately (**Vaughan, above**) and the possibility that the party's financial circumstances may improve in future can be taken into account (**Chadburn v Doncaster & Bassetlaw Hospital NHS Foundation Trust UKEAT/0259/14/LA**).
28. VAT should only be claimed if the party is unable able to reclaim the VAT paid as input tax (**Raggett v John Lewis plc 2013 ICR D1, EAT**).

Conclusions

29. I address each of the respondent's arguments in turn, starting with the question of whether the claims had no reasonable prospect of success. If there were no reasonable prospects of success, I also consider from what point, bearing in mind that I must base my conclusions on the information known at the relevant time (and not with the benefit of hindsight).

No reasonable prospect of success

30. I consider initially the position as it was at the start of the liability hearing and I will address separately later in these Reasons the position after day 3 of evidence (when the further costs warning letter was issued).
31. In relation to the factual allegations which the respondent says were plainly incorrect and bound to fail:
- a. It is true that I have concluded that the claimant's alleged excessive workload was because she was conducting work of her own volition. It is also true that, from the very outset of her claim, she must have known that some of the work she had carried out had not been specifically asked for by the respondent (as she freely accepted that in evidence). That said, I do think the claimant's position was that in reality, in order to do her job effectively, she had no choice but to do those things. I did not conclude that this was the case, however I would not go as far as to say that she had no reasonable prospect of showing this.
 - b. In relation to overtime, again whilst I concluded that Mr Harris had not refused to sign off the claimant's overtime requests, there was evidence of discussions between the claimant and Mr Harris about not claiming overtime at weekends. Similarly whilst I concluded that she in any event had no contractual entitlement to overtime, it was also clear from evidence that she had been claiming overtime without issue under her previous manager. In those circumstances, I do not conclude that she had no reasonable prospect of showing that the facts alleged had happened.
 - c. In relation to her decision to remain in employment after indicating she may resign on 23 September 2023, it was the claimant's position that the conduct she had alleged did indeed occur, but that she was willing to put it behind her. Whilst that does raise issues in relation to affirmation (to which I turn below), it does not mean that she had no reasonable prospect of showing that the matters she had accused him of occurred. In addition, whilst I concluded that Mr Harris had not in fact behaved in the way that the claimant alleged, I did also recognise that there was a significant shift in management style (to a more direct style) when Mr Harris took over the team and therefore I cannot say that she had no reasonable prospect of demonstrating that the alleged conduct occurred.
 - d. In relation to the allegation that Mr Harris offered the claimant's colleague her job, I did conclude that this did not happen and that what had happened was merely the respondent hypothetically scoping out what might happen if the claimant followed through on her threat to resign. In evidence, the claimant said that she had been told that he had offered Ms McDonald her job: whilst I found that not to be the case, I did not make any conclusion that the claimant had lied about that (what I did find generally was that the claimant had a tendency to hear one thing and interpret it differently). I conclude that whilst I did not accept the claimant's evidence, based on the information known to her prior to the

hearing commencing, I do not conclude that she had no reasonable prospects of success. What she argued was unlikely (in the context that the respondent had also asked her not to resign), but had some limited prospect.

32. In relation to the allegation that even if the claimant's complaints had been accepted, this would not amount to a breach of the implied term of trust and confidence, I do not accept that this was the case. Had all of the claimant's allegations been accepted, then this would have arguably been conduct so serious that, judged objectively, it would have amounted to a breach of the implied term of trust and confidence. Taken cumulatively, the allegations were not minor in nature, but if found to have occurred would have demonstrated a very difficult working environment for her. In addition, whilst the claimant was unsuccessful, the respondent was not without criticism (for example, in relation to communications about the change in management structure and the time taken to deal with certain matters). I cannot say that she had no reasonable prospect of showing that this was a breach of the duty of trust and confidence.
33. In relation to affirmation, there are two potential affirmation dates to consider:
 - a. In September 2022 the claimant indicated that she was considering resigning, reflected for a few days, and then decided not to. Her evidence was that she wanted to put things behind her and move on. I conclude that there was clear affirmation of the contract at this stage. However, as held in **Kaur v Leeds Teaching Hospitals NHS Trust 2019 ICR, 1, CA**, there are circumstances in which an individual can resign following a subsequent "last straw" and resurrect previous issues. In those circumstances, I cannot say that she had no reasonable prospect of being able to argue that this is what happened here.
 - b. In February 2023 the claimant indicated that she was going to resign. This situation is slightly different in that the claimant did not decide to move on and put things behind her, but rather delayed her resignation until December 2023. She argued that this was because ACAS told her to raise a grievance, but in any case her resignation came several months after the grievance outcome (by which time she had raised a further grievance). I concluded that the gap between the appeal outcome and the resignation would have been too long and that she would have affirmed her contract. On this point I conclude that the claimant was always going to be in significant difficulty, in particular given the significant length of time between first saying she was going to resign and doing so, and also because of the gap of several months after the appeal outcome was received. The claimant in evidence said that she had health reasons for that later delay. Whilst I consider that the claimant had very limited prospects of successfully arguing that, I do not go as far as to say she had no reasonable prospects.
34. In relation to the allegation about the "last straw", namely the letter dated 5 December 2023, the claimant alleged that this letter said that her concerns

would not be addressed. It did not say that. To the contrary, whilst it recognised that the previous appeal outcome was final and the end of the process, it also said that the letter had been referred to Mr Petrus to respond to the specific points raised. First, regardless of whether it said that her concerns would not be addressed, in reality the claimant had known since the appeal outcome dated 20 September 2023 that her complaints were not upheld and so there would be no new information there (noting that the letter dated 20 September 2023 stated that the decision was final). Secondly, in any event the respondent did pass the letter to Mr Petrus to respond to the specific points, and therefore did address her concerns. Both the appeal outcome and the letter dated 5 December 2023 were in the claimant's possession prior to her issuing proceedings. I do conclude that in those circumstances, given that the letter is in clear terms, this aspect of the claimant's claim had no reasonable prospect of success. That letter could not properly constitute a last straw, and in evidence the claimant herself acknowledged that there was nothing wrong with a letter saying that a response would follow. Similarly, I conclude that the claimant had no reasonable prospect of showing that her resignation was caused by that last straw, given that she had not resigned after the appeal outcome and this letter went no further (in fact was more helpful to the claimant) than that outcome. **On that basis, the claimant had no reasonable prospects of demonstrating that this was the last straw, and this was the case from the outset of proceedings given that she would have had in her possession a copy of the letter dated 5 December 2023 from the outset.**

35. The respondent also says that the claimant can have had no reasonable prospect of being awarded compensation, as any compensation would be reduced to zero because of her conduct after her dismissal (both in relation to returning to the company premises in December 2023 and in relation to comments made about the cleaning contractors at the hearing). Even if she had no reasonable prospect of being awarded compensation, this is not the same as the claim itself having no reasonable prospect of success: compensation is a separate issue to the claim itself and it is entirely plausible for a person to seek a declaration that they have been unfairly dismissed without any expectation of financial redress.
36. Before moving on from prospects of success, I now turn to the position at the end of day 3 when the respondent issued a further costs warning. By that time the claimant had completed her evidence. It would have therefore been apparent that the respondent would argue that she did the additional work of her own volition for example, and that the claimant's evidence was that in referring the 5 December 2023 letter to someone else the respondent had done "nothing wrong". The question is whether, once the claimant's evidence had concluded, by that stage the claim had no reasonable prospect of success in relation to the above matters (in addition to the issue of the last straw which I have already found had no reasonable prospect of success). At this stage, whilst the claimant had given her evidence, we had not yet heard from the respondent's witnesses. It was therefore theoretically possible that they would give evidence, for example, to say that they could understand why the claimant felt obliged to work the extra hours to get the job done (for the avoidance of doubt, they did not say that). I cannot therefore say that she had no reasonable prospect of

success (although I do consider that by that stage her prospects were very limited indeed).

Unreasonable and/or vexatious conduct

37. In relation to the argument that her complaints were misconceived and that it was unreasonable to pursue them, as outlined above I have only found that she had no reasonable prospects in relation to one element (the last straw). That one element however did undermine her case, and from at least 10 July 2024 (the third out of the four cost warnings) she had legal representation. However, I cannot consider whether it was unreasonable for her to continue to pursue those claims without considering what she ought to have known at that time. I have said that I will not consider this at this stage until the claimant has had the opportunity to provide evidence.
38. Turning to the allegation that the claimant was aware she intended to resign on 1 February and yet her claim included matters that postdated that date. I repeat the point above that it is possible to affirm a contract but then for further conduct to resurrect those prior issues, and therefore the fact that her complaint related to matters post-dating 1 February 2023 does not in itself constitute unreasonable and / or vexatious conduct.
39. In relation to the comments made by the claimant post 1 February 2023, but prior to her resignation, that she was going to take the respondent “to the cleaners”, this is relevant in two respects. Firstly, it is relevant to whether her motivation for bringing the proceedings was unreasonable or vexatious conduct, and secondly whether this evidences that regardless of what happened from 1 February 2023 onwards, she always intended to bring the claim (and therefore that matters arising from that point onwards were irrelevant). In relation to the first point, I consider that this shows that she did have a firm intention at that point to bring Tribunal proceedings. That said, that does not show in my view that she is behaving unreasonably or vexatiously: I consider that, regardless of the prospects of success of her claim, the claimant did believe that she had been wronged by the respondent. The fact that she has not succeeded in that claim does not mean that she was unreasonable or vexatious in doing so.
40. The second point is whether the use of the words “to the cleaners” suggests she was motivated by a desire to harm, or punish, the respondent, and as such that this amounted to unreasonable or vexatious conduct. This is a phrase that is commonly used to suggest a person trying to cause maximum financial damage to another person (or company). However, bearing in mind that this comment was made by the claimant to colleagues that she saw herself as being friends with, and the level of upset the claimant felt at how she interpreted the way she was treated (albeit that I did not conclude that there had been a breach of contract), I conclude that the claimant’s usage of it was not to convey a desire to harm the respondent per se, but rather that she intended to “take them to the cleaners” to get the maximum redress she could for herself for what she perceived as unfair treatment. Considering the conduct as a whole, including the nature, gravity and effect of it, and bearing in mind that I must not substitute my own view, I would not go as far as to say it was unreasonable or vexatious conduct.

41. I turn finally to the comments made by the claimant at the hearing about whether the cleaning staff had the right to work in the UK. This comment was both unnecessary and inappropriate. At that stage, the claimant was being asked about her own conduct when she attended the respondent's premises after her resignation and sought to gain entry. Two cleaning contractors had become involved in the situation and in her oral evidence when talking about those contractors, she accused them of concocting a story with others and then suddenly said "I think the respondent ought to look at the eligibility of them being on site or in the country". This was entirely irrelevant to the question of whether or not they had accurately recounted the events of the day in question. She then clarified that she meant that they did not speak good English and did not appear to look after their own appearance. She then went on to add that, if she had been the person in charge of granting access to the building, she would not have granted them access because she would have doubted their eligibility to work in the UK.
42. In my conclusions I referred to the claimant's evidence on this as "extraordinary". I have considered the nature, gravity and effect of the conduct. The nature of it was arguably discriminatory in itself. As to the gravity of it, to accuse an individual (albeit one that was not present and potentially does not even know that it was said) of potentially lacking the legal status to work in this country without any real basis as she has done is a serious matter. She was given the opportunity to clarify and revise what she had said in evidence, but in fact she re-iterated her point rather than reflecting and realising that what she had said was not appropriate. Whilst I recognise that the effect of it was not in fact to damage the respondent's credibility in any way (because the Tribunal did not accept what she was saying) and that the individuals she referred to were not present to listen to their character being impugned in that way, **to suggest that because of language skills (at least in part), it flows from that that an individual may well not not have the right to work in the UK and should not be employed as a cleaner (a role for which language skills do not appear on the face of it to be an essential requirement), in circumstances where this is not relevant to the issues to be determined in the case but is in effect simply an attempt to damage their credibility without any real basis, amounts to acting unreasonably in the way that proceedings have been conducted.** No reasonable person would have conducted themselves in the way that the claimant did. I do not go as far as to say it was vexatious.
43. In summary therefore, the potential threshold for costs has been met in relation to:
- a. The claimant had no reasonable prospects of demonstrating that this was the last straw; and
 - b. The claimant's unreasonable conduct in making a comment about the cleaning contractors' right to work in the UK.
44. In addition, I have said that I will need to hear evidence in order to consider whether the claimant's conduct in continuing to pursue her claim despite it having no reasonable prospect of success in relation to her "last straw"

argument amounted to unreasonable and/or vexatious conduct.

45. I will now proceed to list a one day costs hearing to determine:
- a. Where the claimant had no reasonable prospects of success, did she or ought she reasonably to have known or appreciated that (and from when)?
 - b. Was the claimant's conduct unreasonable and/or vexatious in continuing to pursue her claim despite having no reasonable prospects of success in relation to the last straw argument.
 - c. In relation to any aspects where unreasonable and/or vexatious conduct has been found, and in relation to any matters in respect of which the Tribunal concludes that the claimant did or ought reasonably to have known or appreciated that she had no reasonable prospect of success:
 - i. does the Tribunal consider it appropriate to exercise its discretion to award costs?
 - ii. If so, what award is to be made (or, if potentially over £20,000, what percentage of the party's total costs is to be awarded if the matter is to be referred on for detailed assessment)?
46. In relation to the cross-application for costs, given that I have found that certain elements of the respondent's application did meet the threshold for considering costs (i.e. there were no reasonable prospects of success, and there was unreasonable conduct), I cannot say that the respondent has behaved unreasonably in maintaining its application for costs. Indeed, the respondent has been extremely clear throughout proceedings that it would do so (having issued four separate costs warnings to the claimant). The Tribunal's Judgment did include findings in respect of which the costs warnings had been issued and in those circumstances I do not find any unreasonable conduct in pursuing those further. Whilst a number of the points raised by the respondent have not succeeded, I do consider that whilst (other than in respect of the one point outlined above), she did not have no reasonable prospects of success, her prospects were not strong.

Approved by:

Employment Judge Edmonds

8 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.

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/