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Case Nos: EA-2023-000557-LA
EA-2023-000558-LA
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EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 23 October 2025

BEFORE:

HIS HONOUR JUDGE JAMES TAYLER

BETWEEN:

Miss B Gurney

Appellant

and

(1) Ms M Randall
(2) Merali's Limited
(3) Fordover Services Limited
(4) Mr M Sprack

Respondents

Merali's Limited

Appellant

and

(1) Ms M Randall
(2) Miss B Gurney
(3) Fordover Services Limited
(4) Mr M Sprack

Respondents

Fordover Services Limited

and

Appellant

**(1) Ms M Randall
(2) Miss B Gurney
(3) Merali's Limited
(4) Mr M Sprack**

Respondents

Imogen Egan (instructed by Rahman Lowe Solicitors and Kilgannon and Partners)
for the **Appellants**

Harry Sheehan (instructed by Womble Bond Dickinson (UK) LLP) for the **Mr Sprack**

Ms M Randall neither present nor represented

Hearing date: 7 October 2025

JUDGMENT

SUMMARY

Practice and Procedure

The Employment Tribunal did not err in law in refusing an application for wasted costs.

HIS HONOUR JUDGE JAMES TAYLER

1. The issue in this appeal is whether the Employment Tribunal erred in law in refusing an application for wasted costs.
2. The appeal is against the judgment of Employment Judge A.M.S. Green after a hearing on 1 November 2022 and 13 February 2023. The judgment was sent to the parties on 1 March 2023.
3. I take the facts from the liability and costs judgements of the Employment Tribunal.
4. Ms Randall was the claimant in the Employment Tribunal. Ms Randall is Colombian. English is not her first language.
5. Fordover Services Limited (“Fordover”) is a not-for-profit organisation that provides maintenance and cleaning services for tenants of Scottish Providence House.
6. Miss Gurney was employed by Fordover as a Cleaner/Caretaker.
7. In 1990 Ms Randall met Miss Gurney at a bus stop. Miss Gurney suggested that Ms Randall might undertake some cleaning work at Scottish Providence House. Ms Randall took up the opportunity and started to clean the common areas of Scottish Providence House. Ms Randall was initially paid £55 a week in cash by Miss Gurney. From 2010 she was paid £55.70 per week by cheque signed by Miss Gurney. She did not receive any documentation such as particulars of employment or pay slips. It appears that at some stage Merali’s Limited (“Merali’s”) had offices at Scottish Providence House, although it appears that when the claim was brought Merali’s was dormant.
8. The claimant’s engagement was terminated on 15 April 2020. She was told that a new cleaner had been engaged. Ms Randall contacted her trade union, the United Voices of the World, for assistance. The United Voices of the World referred Ms Randall, to a barrister, Mr Sprack, who has experience of employment law.
9. Mr Sprack represented Ms Randall through direct access. Ms Randall waived privilege in respect of their communications.
10. Mr Sprack’s retainer was set out in a letter of engagement which included:

My preliminary advice

I cannot make any promises, or even firm advice, at this stage. In very rough outline I advise you, based on your instructions, that you have reasonable prospects of success in 6 claims against Betty Gurney, Merali's Limited and/or Fordover Services ('the Respondents'):

1. National Minimum Wage Act : the maximum recoverable would be £9,264 (£1,544 yearly, going back 6 years).
2. Holiday pay : the maximum recoverable would be £9,800 (based on £87.50 weekly x 5.6 weeks x 20 years)
3. Notice pay : the maximum recoverable would be £1,046.40 (for 12 weeks at £87.20 weekly).
4. Redundancy payment : the maximum recoverable would be £2,625 (based on £87.50 x 1.5 x 20)
5. Failure to provide itemised payslips : maximum £386 (£29.70 x 13 weeks)
6. Compensation for unfair dismissal : future lost earnings to be quantified

It is important to emphasise that these would be the sums sought, not necessarily the sums which you will recover. I cannot at this stage assess with any precision your prospects of success, beyond saying that they appear reasonable. This assessment will be reviewed throughout your claims, in particular on consideration of the arguments and evidence advanced by the Respondents.

11. The advice given in the letter of engagement did not refer to age discrimination.
12. The letter of engagement included the only specific advice that Mr Sprack gave Ms Randall about the prospects of success in her complaints. The Employment Tribunal accepted that Ms Randall relied on Mr Sprack in submitting and pursuing her claim.
13. Mr Sprack drafted particulars of claim. The claim was presented to the Employment Tribunal on 21 July 2020 after being approved by Ms Randall. The complaints were unfair dismissal; age discrimination; a redundancy payment; notice pay; holiday pay; arrears of pay; "other" payments; unlawful deduction from wages; and failure to provide itemised payslips.
14. The Employment Tribunal said of Mr Sprack's evidence about the age discrimination complaint:

.... In his oral evidence he said that, in his opinion, he did not think it was worth pursuing an age discrimination claim but this changed before the ET1 was submitted. He said that he had discussed an age discrimination claim in principle because Ms Randall had been concerned that a younger person had replaced her. When he was asked if Ms Randall had given him authority to submit an age discrimination case, he replied “I suppose so. I said to her that I would include it. She said yes and she pushed the button”. Mr Sprack confirmed to me that this was during a telephone call. When I asked him whether he had written an attendance note of that call with the instruction, he said that he took attendance notes of discussions that were significant, but it might have been possible that he had not written an attendance note of that particular advice. I take that to be a “no”. He also confirmed that he did not follow up on his advice in writing with her instructions. Under cross examination, Mr Sprack admitted that he did not take any attendance notes prior to Ms Randall submitting the claim to the Tribunal.

17. Under cross-examination, Mr Sprack accepted that the age discrimination claim was not particularised. There was no mention of it in the particulars of claim. He said that the open preliminary hearing on employment status had been arranged. He said that Miss Gurney had not applied to have the age discrimination claim struck out and was seeking further information about the claim. He said that Merali and FSL were seeking a strike out of the claims on the premise that they believed that Ms Randall was self-employed. He believed that this was something that could have been resolved before dealing with the request for further information.

15. I consider that on a fair reading of the judgment as a whole Employment Judge Green accepted that Mr Sprack included an age discrimination complaint because the claimant suggested that she had been replaced by a younger employee, but failed to particularise the complaint awaiting obtaining further information. I do not accept the suggestion that the Employment Tribunal merely repeated Mr Sprack’s evidence. The Employment Tribunal accepted his evidence despite the fact that Ms Randall said in her statement that she had no recollection of any discussion about the age discrimination complaint.

16. In correspondence solicitors acting for Fordover, Merali’s and Miss Gurney asserted that the complaints had no reasonable prospects of success primarily because there was insufficient control and an unfettered right of substitution that meant that she would not be found to be an employee or worker. Repeated costs warnings were made in correspondence including warnings that an application for wasted costs would be made against Mr Sprack. Mr Sprack was asked to particularise the age discrimination complaint but failed to do so.

17. On 5 February 2021, solicitors acting for Fordover and Merali's offered £2,500 in settlement of all complaints, asserting that there was no prospect of Ms Randall establishing that she was an employee, that the complaints of age discrimination and for holiday pay were unparticularised and that any claim as a worker for National Minimum Wage would be valued at just over two thousand pounds. A further warning was given of an application for costs, including wasted costs against Mr Sprack. The Employment Tribunal held that Mr Sprack did not explain the rationale that had been given for the offer to Ms Randall.

18. A preliminary hearing was held on 7 and 8 June 2021 to consider whether Ms Randall was an employee or worker of Fordover, Merali's or Ms Randall. Employment Judge Green held that Ms Randall was truly self-employed in a judgment sent to the parties on 15 July 2021 for the following concise reasons:

43. I find that Miss Randall was neither an employee or a worker. She was truly self-employed for the following reasons.

- a. there was no requirement for personal service;
- b. there was no mutuality of obligations; and
- c. there was a lack of control.

44. Ms Randall did not undertake to provide her own work and skill (i.e. the requirement for personal service). She was able to provide a substitute which he did on several occasions. This was an unfettered right. She did so without any restrictions (e.g. prior approval from Miss Gurney). The fact that she was not retained for the personal quality of her work is amplified when one remembers that she took prolonged periods of time off work to return to Colombia to visit her family. She was not paid when she was away. She was not reliant upon Miss Gurney approving her absences. She simply told her when she was going away and was required to find cover for her during her absence. If she failed to do that, she knew that she would be unable to return to work at SPH. All that was required was the common parts of SPH had to be cleaned. Ultimately it did not matter who did the work. In practice it was Ms Randall, Ms De Sanchez or Carlos. Miss Gurney no longer wanted to do the work and she paid for other to clean out of her own wages.

45. Apart from an initial period of a couple of weeks where there was a modicum of supervision, Ms Randall had autonomy as to how she performed her cleaning duties on a day-to-day basis. She simply had to ensure that the work was done Monday to Fridays.

For the first five years, she came in to SPH before 9 AM. Thereafter, the work had to be performed between 7 PM and 8 AM. She was not supervised or managed. She was not subject to any performance reviews or disciplinary procedures. The fact that latterly, Miss Gurney felt it necessary to write to Ms Randall pointing out deficiencies and reminding her of her tasks does not, in itself, point to a level of control required to establish employee or worker status. Nor is this the situation that arose in Troutbeck. It bears all the hallmarks of an independent contractor who was retained to provide services which must be performed to a requisite level of standard. If the contractor fails to meet the requisite standard, the client is within its rights to bring that fact to the contractor's attention and require it to remediate the position. When Miss Gurney wrote to Ms Randall that is what she was doing. She was the client, and Ms Randall's work was found wanting and she was reminded of the tasks that needed to be performed and the level of performance necessary to be satisfactory. Apart from this, there were never any meetings to discuss performance over the 29 years that Ms Randall did the work.

46. There was no evidence of mutuality of obligation. There was no evidence to suggest that Miss Gurney offered work to Ms Randall which she had to accept. Ms Randall simply performed the work for which she was paid. If she did not want to do the work (e.g. because she wanted to take time off to return to Colombia) she provided a substitute. Ultimately, the arrangement was terminable by Miss Gurney when she wrote to Ms Randall to tell her that if she did not improve, she would get someone else in to do the cleaning.

47. There are other factors which point to a genuinely self-employed status which are as follows:

- a. Ms Randall did not receive a regular wage or salary. She was simply paid for the work that she did without deduction of tax and national insurance. The money came out of Miss Gurney's wages.
- b. Ms Randall wore her own clothes and was not provided with a uniform.
- c. It cannot be said that there was any level of integration in FSP's organisation.

48. The dominant purpose of the contract was cleaning the common parts of SPH rather than an obligation personally to perform work. Ms Randall was essentially carrying out a business undertaking. Miss Gurney was the customer. It cannot be said that Merali was a customer because it is a dormant company. It cannot be said that FSP was a customer because there was no direct relationship between Ms Randall and FSP and no evidence to suggest that Miss Gurney was acting as its agent. Miss Gurney simply wanted someone else to do the cleaning work which she had previously performed, and she shared part of her wages with whoever did the work to achieve that outcome. She was never reimbursed for that by FSP.

49. As Ms Randall was truly self-employed, it follows that the Tribunal has no jurisdiction to hear her claims.

19. Fordover, Merali's and Miss Gurney applied for costs against Ms Randall and for wasted costs

against Mr Sprack. They were jointly represented by Ms Egan. In her skeleton argument for the costs hearing in the Employment Tribunal Ms Egan summarised the application:

34. The Respondents assert that Mr Sprack was negligent, unreasonable, or improper in:

- a. Failing to advise the Claimant that her Claims had no reasonable prospect of success;
- b. Pursuing an age discrimination on behalf of the Claimant, which was never particularised (and for which it now seems he did not have authority);
- c. Failing to advise the Claimant of the costs risks when costs threats were made;
- d. Failing to advise the Claimant of the benefit of the offer of settlement made to her or to engage with the rationale for it.

20. The application focussed on the assertion that Mr Sprack had been negligent. There was one specific assertion of unreasonable conduct: bringing and pursuing the unparticularised age discrimination complaint.

21. The costs hearing took place on 1 November 2022 and 13 February 2023. Employment Judge Green rejected the costs and wasted costs applications. This appeal concerns only the wasted costs application.

22. At the time of the judgment the power to make a wasted costs order was provided by Rule 80

Employment Tribunal Rules 2013 (now Rule 78 Employment Tribunal Rules 2024).

80. (1) A Tribunal may make a wasted costs order against a representative in favour of any party (“the receiving party”) where that party has incurred costs—

(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.
Costs so incurred are described as “wasted costs”.

(2) “Representative” means a party’s legal or other representative or any employee of such representative, but it does not include a representative 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.

(3) A wasted costs order may be made in favour of a party whether or not that party is legally represented and may also be made in favour of a representative's own client. A wasted costs order may not be made against a representative where that representative is representing a party in his or her capacity as an employee of that party.

23. The leading authority on wasted costs is **Ridehalgh v Horsefield and Another** [1994] Ch.

205. The Court of Appeal held:

... courts should apply a three-stage test when a wasted costs order is contemplated. (1) **Has the legal representative of whom complaint is made acted improperly, unreasonably or negligently?** (2) **If so, did such conduct cause the applicant to incur unnecessary costs?** (3) **If so, is it in all the circumstances just to order the legal representative to compensate the applicant for the whole or any part of the relevant costs?** (If so, the costs to be met must be specified and, in a criminal case, the amount of the costs.) ...

“Improper, unreasonable or negligent”

A number of different submissions were made on the correct construction of these crucial words in the new section 51(7) of the Supreme Court Act 1981. In our view the meaning of these expressions is not open to serious doubt.

“Improper” means what it has been understood to mean in this context for at least half a century. The adjective **covers, but is not confined to, conduct which would ordinarily be held to justify disbarment, striking off, suspension from practice or other serious professional penalty.** It covers any significant breach of a substantial duty imposed by a relevant code of professional conduct. But it is not in our judgment limited to that. Conduct which would be regarded as improper according to the consensus of professional (including judicial) opinion can be fairly stigmatised as such whether or not it violates the letter of a professional code.

“Unreasonable” also means what it has been understood to mean in this context for at least half a century. The expression aptly **describes conduct which is vexatious, designed to harass the other side rather than advance the resolution** of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgment, but it is not unreasonable.

The term “negligent” was the most controversial of the three. It was argued that the Act of 1990, in this context as in others, used “negligent” as a term of art involving the well known ingredients of duty, breach, causation and damage. Therefore, it was said, conduct cannot be regarded as negligent unless it involves an actionable breach of the legal representative's duty to his own client, to whom alone a duty is owed. We reject this approach. (1) As already noted, the predecessor of the present Ord. 62, r. 11 made

reference to “reasonable competence.” That expression does not invoke technical concepts of the law of negligence. It seems to us inconceivable that by changing the language Parliament intended to make it harder, rather than easier, for courts to make orders. (2) Since the applicant’s right to a wasted costs order against a legal representative depends on showing that the latter is in breach of his duty to the court it makes no sense to superimpose a requirement under this head (but not in the case of impropriety or unreasonableness) that he is also in breach of his duty to his client.

We cannot regard this as, in practical terms, a very live issue, since it requires some ingenuity to postulate a situation in which a legal representative causes the other side to incur unnecessary costs without at the same time running up unnecessary costs for his own side and so breaching the ordinary duty owed by a legal representative to his client. But for whatever importance it may have, we are clear that **“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, we would however wish firmly to discountenance 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: “advice, acts or omissions in the course of their professional work which no member of the profession who was reasonably well-informed and competent would have given or done or omitted to do;” an error “such as no reasonably well-informed and competent member of that profession could have made:” see *Saif Ali v. Sydney Mitchell & Co.* [1980] A.C. 198, 218, 220, per Lord Diplock.

We were invited to give the three adjectives (improper, unreasonable and negligent) specific, self-contained meanings, so as to avoid overlap between the three. We do not read these very familiar expressions in that way. Conduct which is unreasonable may also be improper, and conduct which is negligent will very frequently be (if it is not by definition) unreasonable. We do not think any sharp differentiation between these expressions is useful or necessary or intended.

24. The Employment Tribunal specifically quoted the sections that are in bold.

25. The Employment Tribunal went on to refer to another decision of the Court of Appeal which further considered the approach to be adopted to the word “negligent”, **Persaud v Persaud and Others** [2003] EWCA Civ 394, in which it was stated:

I accept Mr Stewart’s submission that there must be something more than negligence for the wasted costs jurisdiction to arise: **there must be something akin to an abuse of process if the conduct of the legal representative is to make him liable to a wasted costs order.** [emphasis added]

26. The Court of Appeal also gave the following warning:

41. There have been numerous cautionary statements warning against appeals from

judges who have refused to make a wasted costs order: see *Wall v Lefevre* [1998] 1 Fam LR 605 at page 614A to D per Lord Woolf MR and *Royal Institute of Chartered Surveyors v Wiseman Marshall* [2000] PNLR 649 at page 659B, where Clarke LJ said:

“...it will only be in a very rare case that this court would interfere with a decision by the judge as to whether or not to make a wasted costs order. It must be rarer still that this court will be willing to interfere with a decision of the judge at the first stage.”

In my judgment the good sense of that is obvious. **The judge has conducted the trial and will be fully aware of the conduct of the legal representatives in the case before him.** It is striking that in this case the judge, despite the very severe criticisms made by him of the claims on behalf of the sons, nevertheless refused to make a wasted costs order. This case is not, to my mind, the exceptional case where it would be right to interfere with the exercise of discretion by the judge. [emphasis added]

27. While in *Persaud* the Court of Appeal referred to “something akin to an abuse of process” when considering the term negligent other authorities make it clear that this is also a requirement when considering the terms “improper” and “unreasonable”. The position was summarised by Simler P, as she then was, in *KL Law Ltd v Wincanton Group Ltd and Another* [2018] 5 Costs LO 639

22. As Elias P (as he then was) held in *Ratcliffe Duce and Gammer v Binns* UKEAT/0100/08, rule 80(1) of the 2013 Rules (or rather its predecessor, rule 48(3) under the earlier Rules) precisely mirrors the definition of wasted costs given in s 51 of the Supreme Court Act 1981. Accordingly, the authorities applicable to wasted costs in civil cases generally, are equally applicable in an employment context. The two leading authorities analysing the scope of s 51 and the circumstances in which wasted costs orders can be made are *Ridehalgh* and *Medcalf v Weatherill and Another* [2002] UKHL 27.

23. In *Ridehalgh*, the court emphasised that the courts should apply a three-stage test when determining whether a wasted costs order should be made. The following three questions should be asked:

- (1) Has the legal representative, of whom complaint is made, acted improperly, unreasonably or negligently?
- (2) If so, did such conduct cause the applicant to incur unnecessary costs?
- (3) If so, is it, in the circumstances, just to order the legal representative to compensate the applicant for the whole or any part of the relevant costs?

However, it is clear from both *Ridehalgh* and *Medcalf*, as applied in an employment context by Elias P in *Ratcliffe*, that **it is not enough simply to establish negligent or other impugned conduct alone. It is also necessary for a duty to the court (or tribunal) to be shown to have been breached by the legal representative if he or she**

is to be made liable for wasted costs: see the judgment of Sir Thomas Bingham MR in *Ridehalgh, and Medcalf* where Lord Hobhouse referred to those observations with approval. In *Persaud v Persaud* [2003] EWCA Civ 394, the Court of Appeal described this requirement as a need to establish something akin to an abuse of the process of the court.

24. These cases emphasise the importance of not undermining or putting obstacles in the way of a legal representative fulfilling his or her duty to present the lay client's case in the best way possible, even if it is thought hopeless and even if advice has been given that the case is unlikely to succeed. A wasted costs application inevitably gives rise to the potential for a conflict of interest between a legal representative and the lay client, and legal representatives ought not to be penalised for presenting their client's case when instructed to do so.

25. Moreover, if the wasted costs application is disputed, save in the most obvious case, whether conduct is unreasonable, improper or negligent is likely to turn on what instructions the client gave and what advice the representative provided. Both are covered by legal professional privilege that can only be waived by the client. Where it is not waived, privilege may make it difficult or impossible for a legal representative to provide a full answer to the complaint made against him or her. Where there is doubt in such cases, the legal representative is entitled to the benefit of that doubt (see *Ridehalgh*). [emphasis added]

28. Employment Judge Green directed himself with care to the relevant authorities and set out his conclusion clearly and concisely:

81. The wasted costs jurisdiction is not engaged, and the application is dismissed for the following reasons:

a. I do not believe that Mr Sprack acted improperly. **The evidence does not point to conduct that would ordinarily be held to justify his disbarment or other serious professional penalty.**

b. There is nothing to suggest that Mr Sprack acted unreasonably. **He was not acting to harass the other side rather than advancing the resolution of the case. Indeed, there is evidence that he was seeking settlement which would resolve the case.** How he communicated and whether he explained the offers to Ms Randall is another matter.

c. **I do not think that Mr Sprack acted negligently as understood by the Court of Appeal in *Persaud*.** Mr Sprack was not using the Tribunal process for a purpose or in a way significantly different from its ordinary and proper use. **There is no evidence of abuse of process.** There were, undoubtedly deficiencies in the service that he provided in the following respects:

i. He did not make Ms Randall aware in his retainer letter that she might be at risk of a costs award against her. There is little evidence that he advised her of the significance of the several cost warning letters that were sent. It

was not enough simply to say that the applications would fail. He needed to explain why to enable Ms Randall to make an informed decision about whether to accept the offer.

ii. He advised that there could be an age discrimination claim and acknowledged that this was not particularised. The claim should have been particularised in the ET1 or in separate particulars of claim as required by *Chandhok*. However, Ms Randall read the claim form and approved it. He should, however, at least have provided further information when it was requested by the other side. Given that the age discrimination claim was not particularised, he could not meaningfully quantify injury to feelings when valued at £8,800.

iii. He did not explain the rationale of the offer to settle for £2,500.

iv. He withdrew the claim against Merali at the open preliminary hearing when he knew that the claim had difficulties as far back as July 2020. He should not have waited until the eleventh hour to withdraw the claim.

d. These deficiencies might amount to negligence in the non-technical sense but following *Persaud* a higher standard applies to engage the wasted costs jurisdiction.

83. Mr Sprack should not be held to have acted improperly, unreasonably or negligently simply because he acted on behalf of Ms Randall whose claim was doomed to fail. It was his duty to present her case even though he might have thought that it was hopeless and even though he may have advised Ms Randall that it was. Indeed, he believed the case had some prospect of success as set out in his preliminary advice. It was for the Tribunal to judge the merits of the claim. Following *Ratcliffe*, the notion that a wasted costs order can be made against a lawyer simply because his client is pursuing a hopeless case is entirely erroneous. Such conduct does not of itself demonstrate that the representative has acted improperly or unreasonably. Clients frequently insist on pursuing a case against the best advice of their lawyers.

29. The first ground of appeal is that the Employment Tribunal misdirected itself to the correct test for "unreasonable" or "improper" conduct required for the award of wasted costs. It is asserted that this is demonstrated by the fact that the Employment Tribunal quoted only part of the passages (in bold in the quotation above) in which the Court of Appeal considered the terms "unreasonable" and "improper" in **Ridehalgh**. While that is correct, there is no requirement on the Employment Tribunal to quote the entirety of a passage from a case. The Employment Tribunal is only required to provide a summary of the relevant law that it applied. The application for costs advanced before the Employment Tribunal focussed almost entirely on the term "negligent". The only reference to

unreasonable conduct in the skeleton argument for the costs hearing produced by Ms Egan was to the unparticularised age discrimination complaint. In those circumstances it is not surprising that the Employment Judge focussed on the allegations of negligence. The finding that there was no evidence of abuse of process also meant that the very limited assertions of "unreasonable" and "improper" conduct were properly dismissed.

30. The second ground of appeal asserts that the decision that Mr Sprack did not act improperly, unreasonably, or negligently was perverse. I do not consider that the high threshold for establishing perversity is met. It is asserted that Mr Sprack's conduct "would be regarded as improper according to the consensus of professional opinion" and that there were breaches of the Bar Standards Code of Conduct. These were not points that were specifically argued before the Employment Tribunal and I do not consider that they can now be raised on appeal. I do not consider that there is any proper basis to overturn the factual finding of the Employment Tribunal that Mr Sprack was not guilty of anything akin to abuse of process.

31. The third ground of appeal asserts that the Employment Tribunal made a perverse finding that Mr Sprack should not be held to have acted improperly, unreasonably, or negligently simply because the claim was doomed to fail. While it is correct that this principle has been referred to in the context of cases where privilege has not been waived, even if there is evidence that a representative has acted unreasonably or negligently by failing to advise their client that the case has no reasonable prospects of success it remains necessary for there to have been some conduct that is akin to an abuse of process. The Employment Tribunal found as a fact that there was no such conduct.

32. Accordingly, the appeals are dismissed.