EMPLOYMENT TRIBUNALS

Claimant: **Mr J Harrison**

Respondent: **Mr D May t/a Leeds Gymnastics Academy**

Heard at: **Leeds** **On:** **24 October 2025**

Before: **Employment Judge Miller**
Ms P Pepper
Mr Q Shah

Representation
Claimant: Mr I Harrison (claimant's father)
Respondent: In person

JUDGMENT

1. The respondent acted disruptively and/or otherwise unreasonably in the way he conducted proceedings.

2. The respondent must pay the claimant the sum of **£2,178** for his preparation time.

3. The respondent is not required to pay the sum until the earliest of the following dates:

    a. 14 days after the outcome of the rule 3(10) hearing in the respondent's appeal number EA-2025-000294-AS if neither of grounds 1 and 7 of that appeal are allowed to proceed; or

    b. 14 days after the date that the EAT hands down its final decision if either or both of grounds 1 and 7 of that appeal are allowed to proceed to a final hearing.

4. Time for the respondent to request a reconsideration of this decision is extended to the earliest of the following dates:

    a. 14 days after the outcome of the rule 3(10) hearing in the respondent's appeal number EA-2025-000294-AS if neither of grounds 1 and 7 of that appeal are allowed to proceed;

b. 14 days after the date that the EAT hands down its final decision if either or both of grounds 1 and 7 of that appeal are allowed to proceed to a final hearing.

REASONS

Introduction and the application

1. We start by apologising for the delay in producing this reserved decision. This was for a number of reasons: firstly, pressure of work on the judge and the administration and secondly because of the need to address Mr May's application made after the hearing. Although that application was made on 27 October 2025, it did not come to the judge's attention until 7 November 2025 and there were some regrettable further delays in seeking the claimant's comments.

2. This is our decision on the claimant's application for a preparation time order made on the basis that the respondent had acted vexatiously, abusively, disruptively or otherwise unreasonably in the way that the proceedings or part of them have been conducted.

3. The claimant sets out three broad bases in which he says the respondent has acted vexatiously, abusively, disruptively or otherwise unreasonably. They are:

    a. That the respondent acted in a threatening way in an effort to persuade the claimant to drop his case in respect of some specific settlement communications through ACAS.

    b. That the respondent used the threat of proceedings in the County Court as leverage to compel the claimant to withdraw his employment tribunal proceedings.

    c. That the respondent disingenuously asserted that he attended the final hearing starting on 17 December 2024 at midnight on the basis of a typo in the notice of hearing.

    d. That the respondent has unreasonably failed to comply with any of the case management orders made by the tribunal for the preparation of the final hearing.

4. The claimant applies for a preparation time order for the sum of £9503.14 for a total of 202 hours of work across the two years 23/24 and 24/25 leading up to the final hearing on 17 December 2024. He has provided a breakdown of when the time was spent as annexed to these orders.

5. The respondent objects to that application. In summary the basis of his objection in respect of each of these matters is that

    a. ACAS communications are without prejudice, and it is not permitted to rely on those matters as the basis of an application for a

preparation time order.

b. That the proceedings in the County Court were genuine and the tribunal has no jurisdiction to make any determination of any matter relating to those proceedings.

c. The respondent genuinely did attend the tribunal at midnight, and this was because of matters relating to his disabilities of autism and/or ADHD.

d. The respondent was unable to comply with the Case Management orders because he had asked the tribunal on a number of occasions for reasonable adjustments related to his disabilities to enable him to comply with those orders. Specifically, it is recorded on the tribunal file that the respondent required more information about what he was required to do to comply with the orders for disclosure.

6. The application was dealt with at an oral hearing today where both parties were entitled to make representations. The claimant did not attend but was represented by his parents. The respondent attended and represented himself. As an adjustment, the respondent weas permitted to attend remotely with his camera off after initially attending with his cameral on to confirm his identity. We did not hear any oral evidence from either party but relied on their written and oral representations. We also considered matters on the tribunal file of which both parties were aware and our own recollection and experience of what happened at final hearing in December 2024.

Threatening ACAS communications

7. The first allegation of the respondent acting unreasonably concerns some ACAS communications. This relates to an email that the claimant says was sent by ACAS to the claimant on 27 September 2024.

8. The role of ACAS in this context is to help facilitate settlement between the parties without the need for a final determination by the Tribunal. There is a rule that evidence of communications (documents and evidence of discussions) is not admissible in Tribunal proceedings if the communications occur at a time when there is an existing dispute between parties and the communication is made with a genuine attempt to settle the dispute. Such communications are called “without prejudice” communications.

9. If one or both of these conditions are not met the evidence will not be without prejudice and will be admissible (if it is relevant evidence).

10. Without prejudice status can be lost if the communications amount to or evidence “perjury, blackmail or other “unambiguous impropriety”” (*Unilever plc v Proctor & Gamble Co* [2000] 1 All ER 783). This is a high bar, and the exception should only be applied in the clearest cases to protect the integrity of the rule. The purpose of the rule is to encourage parties to be forthright in settlement discussions to help them settle, without fear that

their communications will later be held against them.

11. We do not consider that it is appropriate or necessary to set out those communications as to do so would defeat the purpose of the without prejudice rule.

12. Firstly, we find that the communications were between the parties and ACAS at a time when proceedings were already started and were obviously done with the intent to achieve settlement.

13. Secondly, although the document referred to is robust and could be perceived as threatening it does not in our view reach the high threshold of unambiguous impropriety. We find, therefore, that these communications are not admissible as they are without prejudice and cannot therefore amount to unreasonable, abusive, disruptive or vexatious conduct.

14. That is not, however, the end of the relevance of this issue. The respondent went further and said that not only should that correspondence be excluded, but that it did not in fact exist. We therefore asked Mr Harrison to send the response and the tribunal a copy of the correspondence which he did in a break.

15. The respondent's response was that it was not genuine. He said it had been altered or edited. He said he did not write the letter that was included in the email from ACAS, and he did not instruct his solicitors to do so.

16. Although neither party was giving evidence under oath, the parties still have a duty to be honest to the Tribunal. In our view, Mr May's response was, frankly, a preposterous suggestion. The suggestion that Mr Harrison fabricated this email over lunch is just not plausible. Regrettably, Mr May's response to the production of the email is wholly indicative of the way in which he has conducted himself throughout these proceedings. The email from ACAS speaks for itself and we find that it was genuine and can only have been authorised or directed by the respondent who, as a sole trader, must ultimately have been Mr May.

Threatening County Court Procedures

17. This relates to a part of the without prejudice communications we have referred to above and is not referenced elsewhere. For the same reasons, therefore, (namely that the alleged threat is included in without prejudice correspondence) this communication is not admissible and the alleged threat cannot be relied on by the claimant as unreasonable, vexatious, abusive or disruptive conduct by the respondent.

Findings

Failure to follow case management orders

18. We deal with this allegation next as our findings on this are likely to be relevant to the final allegation about Mr May disingenuously asserting that he had attended the Tribunal at midnight.

19. The respondent did not comply with the following Case Management orders made by EJ Wade on 25 July 2024 (the numbering reflects the original numbering in the case management orders):

> 18. By no later than 19 September 2024 the respondent must send the claimant copies of all documents relevant to the complaints above. [referring to the list of issues in the case management order]
>
> 21. By 3 October 2024 the claimant and the respondent must agree which documents are going to be used at the final hearing.
>
> 22. The respondent must prepare a file of those documents with an index and page numbers. They must send a hard copy to the claimant by 10 October 2024.
>
> 23. The file should contain:
>
> 23.1 The claim and response forms, any changes or additions to them, and any relevant tribunal orders. Put these at the front of the file.
>
> 23.2 Other documents or parts of documents that are going to be used at the hearing. Put these in date order.
>
> 24. The claimant and the respondent must send each other copies of all their witness statements by 31 October 2024
>
> 29. The respondent must bring four copies of the hearing file and all parties' statements to the Tribunal on the first morning of the hearing by 9.30am.

20. On 18 September 2024 the respondent requested an extension of time to provide the documents at paragraph 18 of the case management orders on the basis that "during the preliminary hearing it was requested that the claimant provide stronger particulars specifically in relation to the indirect discrimination claims. To date no such particulars have been provided".

21. The tribunal appears not to have dealt with that application immediately and the application was repeated on 1 October 2024. On 14 October 2024 EJ Brain wrote to the respondent as follows

> ""The case management order provided that:
>
> 13 Unless the claimant tells the Tribunal that the complaints to be determined at the final hearing are different to those above, by 4pm on 8 August 2024, they shall stand as the complaints to be determined and the claim amended accordingly.
>
> 14. If the claimant relies on different or other complaints, he must, also by 4pm on 8 August 2024, provide to the Tribunal and the respondent a short summary of any other allegations and the legal provisions relied upon and where in his claim statement the details are to be found. The claimant has not sought to rely on any different complaints or inform the tribunal that the list of issues is incorrect. The claimant was not ordered to provide further

particulars of the claim.

There is nothing to prevent the respondent from complying with the disclosure obligations in paragraph 18. He must do so by 21 October 2024."

Please reply by 21 October 2024".

22. On 21 October 2024 respondent requested reasonable adjustments. Specifically, he requested:

"Clarification of Broad and Unclear Instructions: The respondent has specific difficulty with following broad or unclear instructions. As a reasonable adjustment, we request that the instructions regarding the disclosure be elaborated upon, providing specific details of what exactly is required within the disclosure. This will enable the respondent to better understand and comply with the requirements".

23. The respondent referred to his disabilities of ADHD and autism setting out some of his difficulties and attaching his diagnostic reports. That communication was not copied to the claimant. That application was not considered because the respondent had not copied it the claimant. The respondent made the application again 4 November 2024, copying the claimant but not this time attaching any evidence (the diagnostic reports).

24. In that application Mr May said

"The respondent has specific difficulty with following broad or unclear instructions due to ADHD and Autism. As a reasonable adjustment, we asked that the instructions regarding the disclosure obligations be elaborated upon to provide specific details of what exactly is required within the disclosure. This is crucial to enable the respondent to understand and comply with the Tribunal's requirements".

25. Employment Judge Wade replied to that application and she said

"1) The orders are clear as to what documents are required.

2) No further particulars were ordered because the complaints were set out. An opportunity was given for the claimant to dispute the Judge's understanding. The claimant has not done so. Amendment based on that understanding was permitted. The complaints to be tried at the hearing are those in the orders. The complaints are clear.

3) If the parties have not complied with the Orders, the Tribunal will still decide the case at the hearing in December. It will do its best, taking account of both parties' disability information and relevant guidance. [If this has not been done,] Attached is information for requesting transcripts."

26. At this hearing today the respondent confirmed that he had not any point (in fact even during the course of his employment) spoken to the claimant at all. He had not, specifically, spoken to the claimant to discuss what documents each party was expecting to send to the other.

27. We were referred by Mr May to medical information he had submitted but it is sufficient to refer to his letter to the tribunal of 21 October 2024 (also not copied to the claimant) when he said:

> "It is important to note that the respondent is a disabled person by reason of ADHD and Autism. The attached medical reports detail the respondent's limitations, which include but are not limited to:
>
> - Problems with memory recall
> - Executive dysfunction
> - Difficulty sustaining attention in tasks or activities
> - Challenges in organising tasks and activities
> - Failure to follow through on instructions and complete duties
> - Frequently losing items necessary for tasks (It is noted the Respondent has lost the ET1 and requests another copy)
> - Easy distraction by extraneous stimuli
> - Forgetfulness in daily activities
>
> Furthermore, the respondent struggles to follow unclear or broad instructions, particularly without specific details.
>
> His executive dysfunction worsens during periods of stress, making it challenging to stay organised, manage time, and track tasks. As a result, the respondent is at a significant disadvantage when participating in this matter compared to a non-disabled person".

28. At no point did the respondent state that he no longer had access to the case management orders. He has not explained what it is about the clear instructions in the case management orders that he found difficult to follow.

29. In the course of this hearing the respondent was able to make coherent and detailed legal arguments. We challenged the respondent that the way he was presenting his case today was not consistent with somebody who did not understand the very clearly worded case management orders.

30. The respondent said that that was because everything that he had said in his submissions was scripted by chat GPT. Whether or not this is correct, Mr May was very obviously able to prepare for the hearing today. He was able to prepare those submissions and he was able to send in representations in advance. He is also submitted an appeal to the Employment Appeal Tribunal and instituted, we understand, proceedings in the County Court.

31. Beyond that, the judge at the preparation time order hearing had a detailed discussion with the Mr May at the conclusion of what he said were his preprepared submissions about the meaning of the case of *Yerrakalva v*

Barnsley MBC [2011] EWCA Civ 1255 (03 November 2011) which were clearly not scripted. Mr May was able to reply quickly and coherently to the discussion. It is apparent that he was also able to undertake research on his computer or phone while we were in the course of the hearing and engaging discussion about that because Mr May referred to a website that he was looking at about that case.

32. All of these matters (set out in paragraphs 29 and 30) require a greater degree of executive functioning in a situation that is inevitably more stressful (namely in the course of a tribunal hearing) than would be the case during the 6 weeks from 19 September 0224 to 31 October 2024 that the respondent had to comply with the case management orders of EJ Wade.

33. We have not referred to all of the communication throughout the proceedings but having regard to how the respondent presented himself today and how the respondent has conducted this proceedings - namely by making a number of applications and interacting usefully and sensibly with the tribunal about those interactions – it is simply not plausible, and in fact bordering on disingenuous – to suggest that the respondent did not understand what was required of him in respect of the orders made by Employment Judge Wade.

34. Even if he was unclear about the precise scope of what documents were to be disclosed and what happened thereafter, it would have been perfectly reasonable for him to have a conversation with the claimant to discuss this document.

Alleged attendance at the Tribunal at midnight

35. The final allegation of unreasonable conduct relied on by the claimant relates to the respondent's assertion that he attended the tribunal at midnight.

36. In our view this as part of a wider allegation about the respondent that he has behaved in a disingenuous way throughout. He has sought to manipulate tribunal proceedings throughout to delay and disrupt the proceedings.

37. The background is that on 2 August 024 the tribunal sent a notice of hearing to the parties that said

> "There will be a Final Tribunal hearing at **2nd Floor, West Gate, 6 Grace Street, Leeds, LS1 2RP** on **17 December 2024, 18 December 2024, 19 December 2024**. The hearing will start at **00:00"**.

38. This is in the context that there was a preliminary hearing on 25 July 2024 at which Mr May attended. The Case Management Orders produced from that hearing (which Mr May referred to as being unclear) said

> "The final hearing will take place in **Leeds** in person on **17 to 19 December 2024 to include remedy if required.** The case will be heard by an Employment Judge and two non-legal members. The hearing will start at 10.00 am. You must arrive by 9.30 am. Sometimes hearings start

late, are moved to a different address or are cancelled at short notice. You will be told if this happens".

39. On 3 February 2025, the respondent's solicitors requested a reconsideration of the final judgment. Amongst other things, they said:

> "We attach the Notice of the Final Tribunal Hearing which our client received dated 2 August 2024. This stated, somewhat misleadingly, that the hearing will start at 00:00. As mentioned previously, our client is autistic and he thought the hearing started at midnight on 17 December.
>
> He therefore attended the Tribunal hearing at this time on 17 December 2024 and found the Employment Tribunal closed. Our client tried to call the Employment Tribunal on 10 occasions but of course did not receive any response from the Tribunal.
>
> We attach our client's phone records showing his attempts to telephone the Tribunal.
>
> We are instructed that attending the Tribunal to find the building closed and not getting an answer to the Respondent's phone calls further added to his anxiety.
>
> Our client is not aware of any calls made from the Tribunal on 17 December asking him to attend the hearing".

40. The attachment was indeed screen shots of a mobile phone showing attempts to call the Tribunal at midnight. The screen shots did not have any dates on them. They said the calls were made "today" or "yesterday". We have no idea when the screen shots were taken and, given that Mr May did not assert to the Tribunal that he had attended the tribunal at midnight on 17 December 2024 until 3 February 2025, it is wholly possible that the calls were made on a date after 17 December 2024 to create the impression that he had phoned the tribunal at midnight on 17 December 2024.

41. In any event, even if he did call the tribunal at midnight on 17 December 2024, there is nothing to suggest that Mr May made those calls from outside the closed Tribunal building. We have no credible basis for concluding that Mr May did mistakenly attend the Tribunal at midnight on 17 December 2025.

42. Mr Harrison makes the further point that Mr May is inconsistent in his case by asserting both he was not well enough to attend the tribunal at 10am on 17 December 2024 but was well-enough to attend later the same day at midnight. Mr May says that he was stressed and deprived of sleep leading to his non-attendance, but that simply does not make sense. The respondent would not have been sleep deprived on the morning of 17 December 2024 by reason of staying up until midnight later the same day.

43. Finally, there is no record of the respondent seeking to contact the tribunal or the claimant to check the start time.

44. We think that the respondent was being dishonest in his assertion that he

attended the tribunal at midnight. In our view it is apparent that the respondent had no intention of attending the final tribunal hearing on the basis of his postponement applications. Those may or may not have been legitimate or genuine, but they were dealt with at the time.

45. In our view the later assertion that he had in fact attended the tribunal at midnight and not the previous morning (or even the following morning although that is not what Mr May has alleged) is quite frankly ludicrous. The respondent said that he had had five claims brought against him previously albeit that he said he had been unable to attend those proceedings because of the tribunal's persistent refusal (on his account) to make reasonable adjustments. He had, or at least had asserted that he had, instituted at least one set of County Court proceedings and been able to comply with the more complex procedural requirements there. The case management orders of EJ Wade clearly stated time at which the tribunal hearing would start.

46. In our judgement Mr May has sought at every available opportunity to use tribunal procedure to frustrate and delay any attempts by the claimant to progress his case.

Other issues relating to conduct

47. We accommodated Mr May's request to attend the hearing remotely as a reasonable adjustment. However, Mr Harrison made the valid point that the respondent while being allowed to attend remotely by telephone was able to review such documents and undertake such research as he wanted online as matters progressed. That opportunity was denied to Mr Harrison because he was in the Tribunal room. This is a regrettable consequence of hybrid hearings but point well made by Mr Harrison. It does, however, reinforce our conclusion that Mr May is perfectly capable of understanding the simple case management orders made by EJ Wade.

48. Our conclusions about the reasonableness of Mr May's conduct were reinforced by matters that came up in the course of these proceedings. This includes our findings about Mr May's assertions relating to the veracity of the ACAS communications (above) but also relates to written representations made by Mr May.

49. Those written representations from Mr May contained numerous case law references. At least half of those references were non-existent and Mr May admitted that he had just used Chat GPT to produce his representations without checking any of the results. He said he was reasonably entitled to conclude that everything that Chat GPT said was reliable, and in fact, he said there was no reason to fact check the internet at all.

50. Mr May runs, or has run, a business. It states in the medical records that Mr May relied on that he has a degree in economics and a postgraduate diploma in transport economics. We take judicial notice of the fact that in order to obtain a degree a student must undertake research and cite credible resources. In all these circumstances, it is, again, disingenuous for Mr May to assert that he reasonably believed that everything Chat GPT

says is reliable and that the internet does not require “fact checking”.

51. Not only is this an unreasonable view, we simply do not believe that Mr May had this view.

The respondent’s means

52. Mr May said that he was no longer running his business and effectively had no income other than benefits and no assets. His house and all other assets are in the name of his partner. He provided no documentary evidence about his means.

Time spent

53. The time the claimant said he spent on preparing is detailed in the annex to this judgment. Mr May made representations about the appropriateness of various aspects of that time and the absence of supporting evidence. We set out our view about that in our conclusions below.

Law and conclusions

54. The provisions for a preparation time order are set out in the Employment Tribunal Procedure Rules 2024. They say, as far as is relevant:

> 72 Definitions
>
> “preparation time” means time spent by the receiving party including any of the receiving party’s employees or advisers) in working on the case, except for time spent at the final hearing
>
> 73 (2) A preparation time order is an order that the paying party make a payment to the receiving party in respect of the receiving party's preparation time while not represented by a legal representative.
>
> 74 (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,
>
> 77 The amount of a preparation time order
>
> (1) The Tribunal must decide the number of hours in respect of which a preparation time order should be made, on the basis of—
>
> (a) information provided by the receiving party on the preparation time spent, and
>
> (b) the Tribunal's own assessment of what it considers to be a reasonable and proportionate amount of time to spend on such preparatory work, with

reference to such matters as the complexity of the proceedings, the number of witnesses and documentation required.

(2) The hourly rate is £44 and increases on 6 April each year by £1.

(3) The amount of a preparation time order must be calculated by multiplying the number of hours assessed under paragraph (1) by the rate under paragraph (2) which is applicable to the year beginning 6 April in which the preparation time was spent.

82 Ability to pay

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.

55. Although these rules came into effect on 6 January 2025, the previous rules were in identical terms. The relevant hourly rates for a preparation time order are:

    a. From April 2023 - £43 per hour

    b. From April 2024 - £44 per hour

    c. From April 2025 - £45 per hour

56. There are three broad questions for us to consider:

    a. whether the threshold is met so that a preparation time order can be made, as set out in rule 74 (2);

    b. if so, whether we should exercise our discretion to make that order; and

    c. if so how much to award.

57. Relevant principles are:

    a. Costs are the exception rather than the rule

    b. Costs are compensatory, not punitive.

    c. It is also not necessary for there to be a direct causal link between the conduct alleged and the costs incurred. However, in *McPherson v BNP Paribas (London Branch)* [2004] ICR 1398, (cited in *Yerrakalva*, below) Mummery LJ said

        "40. In my judgment, rule 14(1) does not impose any such causal requirement in the exercise of the discretion. The principle of relevance means that the tribunal must have regard to the nature, gravity and effect of the unreasonable conduct as factors relevant to the exercise of the discretion, but that is not the same as

requiring [the respondents] to prove that specific unreasonable conduct by Mr McPherson caused particular costs to be incurred".

He later clarified that passage in *Barnsley v Yerrakalva* [2012] IRLR 78 CA:

"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". *Barnsley v Yerrakalva* [2012] IRLR 78 CA.

d. The amount of costs should be limited to those costs that were reasonably and necessarily incurred.

58. The question of whether the respondent has acted vexatiously, abusively, disruptively or otherwise unreasonably in conducting his case is a question of fact for us.

59. In our judgment, the respondent has acted disruptively and unreasonably in the way he has conducted the proceedings. By refusing to engage with the case management orders, the respondent has unreasonably failed to properly conduct the proceedings. If it were not clear from our findings above, we make it explicit that the respondent did NOT require further clarification of the case management orders. He simply refused to comply with them. Taken together with the respondent's postponement applications and failure to attend the final hearing, we conclude that this is because he was trying to disrupt the proceedings. In simple terms he was trying to make it difficult for the claimant to pursue his claims.

60. The respondent's failure to attend that hearing and then disingenuously claim that he had attended at midnight was a further attempt to disrupt proceedings, It was an attempt to overturn the tribunal decision using a fortuitous (from Mr May's perspective) mistake by the Tribunal in the notice of hearing.

61. In our judgement, the entirety of the respondent's conduct as set out above in failing to comply with case management orders and then disingenuously asserting that he had attended the Tribunal at midnight amounts to both unreasonable and disruptive conduct of the proceedings by him.

62. Having decided that the threshold in rule 74 (2) is crossed we must decide whether to exercise out discretion to make a preparation time order.

63. We are required to consider whether it is just to make an order and we may, but do not have to, take into account the respondent's ability to pay.

64. It is relevant in our view, to the exercise of our discretion, that the respondent has a live appeal before the Employment Appeal Tribunal. That appeal has been allowed to progress to a final hearing in respect, only, of whether the Tribunal erred in respect of the amount of compensation we awarded. That question is wholly unrelated to the conduct of the respondent

in the way he conducted the proceedings.

65. However, there are a number of other grounds of appeal that are to be considered by the EAT at a rule 3(10) hearing. They are, in summary:

    a. Alleged failure by the tribunal to make reasonable adjustments – this relates to refusal to postpone the hearing and not giving more guidance on the case management orders; and

    b. That the incorrect notice of hearing identifying the start time of the final hearing as being midnight on 17 December 2024 amounted to an error of law

66. These issues are clearly relevant to the conduct of Mr May that we have concluded was unreasonable and disruptive and, if the EAT allows an appeal on those bases that is likely to impact on this decision.

67. However, in our view, the conduct of Mr May was manifestly unreasonable and disruptive and, more relevantly, deliberate to frustrate the claimant's attempts to pursue his claim. Aside from the potential appeal to the EAT, it is in our view just to make a preparation time order.

68. In respect of Mr May's means, we decline to take that into account in deciding to make an order. Mr May has arranged his financial circumstances so that he currently does not have any visible assets or substantial income. However, until recently he ran a business and we have heard nothing to suggest that his circumstances will not improve in the future.

69. For reasons relating to the appeal, we have ordered that the obligation to pay the amounts specified in this order is delayed. It is entirely possible that Mr May's financial circumstances will change in the next year. In those circumstances it is not appropriate to take into account Mr May's current financial circumstances,

70. We cannot, however, ignore the fact that the respondent's appeal on the remaining grounds might be successful and that would have an impact on our decision. We therefore make an order in the terms above to account for this possibility.

71. The respondent had made an application to stay this application pending the outcome of the appeal. In our view, that is not proportionate, but any injustice to the respondent in the event that his appeal on the remaining grounds is successful is address by the order delaying the requirement for payment.

72. Finally, then, we consider how much the preparation time order should be. Rule 77 (1) sets out the matters that we can take into account. In accordance with rule 72, we can only take into account time spent by the claimant, not his family, on preparing the case. In any event, even if we are wrong about that and his family could be his advisers, we consider that it is just to limit the time spent only to that spent by the claimant. To do otherwise would be mean that the claimant was recovering multiple times

for the same time.

73. This reduces the time to

    a. Prehearing: 23 hours and 36 minutes

    b. Hearing preparation: 56 hours

    c. Post hearing: 16 hours

74. We allow time for the matters described as face-to-face meetings. We have only allowed the claimant's time for this, but this is effectively the claimant thinking about and considering case strategy and this is a reasonable cost.

75. We do not allow anything for post hearing time except an amount for preparing for the preparation time order. Any time spent dealing with the appeal is a matter for the EAT to consider. The time for preparing for the preparation time order is not specified but we consider that 4 hours, represented by the preparation of documents, seems appropriate.

76. This comes to a total of 99 hours. Taking a proportionate approach, the claimant has split this as being 14% in 2023/2024 and 86 % in 2024/2025. This seems reasonable, in our view, as the orders were required to be complied with from 8 August 2024 (so in the years 2024/2025) and the majority of preparation would need to be done in the run up to the final hearing.

77. In our view, 99 hours is not a manifestly excessive amount of time to spend preparing for a three-day final hearing for a person representing themselves.

78. This would mean 13.86 hours at £43 per hour and 85.14 hours at £44 per hour.

79. However, in our view it is not proportionate to make a preparation time order for the entire period. Bearing in mind that we must have regard to the nature, gravity and effect of the unreasonable conduct as factors relevant to the exercise of the discretion, in our view the respondent's unreasonable conduct had little to no impact on the claimant's preparation for the case before Mr May started failing to comply with the case management orders. Although this represented the majority of the work the claimant needed to do, he would still have needed to have prepared for the trial.

80. Taking all these factors into account, it is proportionate in our view to make a preparation time order for half the time, but at the 2024/2025 rate (when the respondent's conduct is likely to have had the biggest impact on the claimant).

81. We therefore make a preparation time order for 49 hours and 30 minutes at £44 per hour which comes to a total of £2,178.

82. We make the order in the terms set out above in the judgment section to account for the appeal pending before the EAT.

Addendum

83. After the first draft of this decision was prepared but before it was promulgated, Mr May sent an email to the tribunal objecting to the admission of the ACAS letter referred to above. In summary, Mr May says he was ambushed by the late production of this letter and was denied the opportunity to consider it and take advice. He says there was no explanation why the letter had not been produced previously and that the tribunal should have refused to admit the document. Particularly, he said, "this prejudice was particularly acute given the Respondent's disabilities, which affect information processing, communication, and the ability to respond swiftly under time pressure. The disadvantage caused by the late disclosure was therefore substantially greater than that which would have been experienced by a non-disabled comparator in equivalent circumstances".

84. Mr May said that there was inconsistency in the treatment between the parties in that the tribunal, initially at least, refused to allow Mr May to reply on medical evidence that had not been disclosed to the claimant on that basis whereas the claimant was allowed to rely on a document the respondent was not warned about in advance.

85. The claimant was given an opportunity to reply. He said that the tribunal had requested a copy of the latter so that the Tribunal must have considered that it was fair and reasonable to do so and that Mr May did not object to the production f the letter at the time. The reference, he says, to the refusal to admit Mr May's medical evidence is irrelevant as that evidence was admitted. He says Mr May had access to the basis of the claimant's application and was not prejudiced.

86. In respect of the allegation that Mr May was subject to more prejudice because of the impact of his disability, the claimant said

    "I find this unfair, the hearing was about the costs that I submitted, and Mr May had access to my statement that I submitted. At no point between me sending the statement and the hearing did Mr May state that there was no evidence for my statement, nor did he provide any evidence to the hearing that my statement was incorrect. I believe that as Mr May is representing the company he set up, if Mr May, as the representative, needs adjustments, then he needs to also look into other ways in which his company can help him - he too could have asked for a representative to be present with him".

87. He concludes that "I feel Mr May is trying any and all ways to make this case last as long as possible".

88. The respondent's application to exclude the ACAS letter is refused. The letter was quoted in the claimant's application. At no point did Mr May dispute its legitimacy prior to the hearing and nor did he request a copy before the hearing. We have made our findings about the veracity of the letter predicted by the claimant.

89. It is right that the tribunal asked for a copy of the letter, and we have no

recollection of Mr May objecting to its production. We ensured that he had time to consider it before being asked questions. It is a short letter which Mr May was either a party to or which, as turned out to be the case, he disputed the validity of. These matters were in Mr May's knowledge and it is not clear what difference taking advice would make to the factual issue in dispute.

90. Unlike the medical records, this was a short letter that could be, and was, dealt with quickly. In any event, however, when it transpired that the respondent's medical records had been provided to the claimant (albeit that the claimant's representatives may not actually have seen them) Mr May was permitted to rely on them.

91. We have set out our findings above about the letter. In our judgment, Mr May was not prejudiced by the late production of the letter, and his application is therefore refused.

Approved by:

Employment Judge Miller

10 December 2025

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

Notes

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

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

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

Appendix

The amounts claimed by the claimant

17. Preparation time for this tribunal includes authoring responses to case management orders and preparing files for the hearing, including all my evidence.

18. Supporting time from my family in support of the above; necessary as a consequence of my disability and without their help and support, I would not have been able to pursue this case. 19.Individuals supporting this claim:

19.1. Joseph Harrison, Ian Harrison (Named carer), Celia Harrison (Witness) and Kimberley Rose Harrison (Sibling)

20. Pre-Hearing time:

Telephone calls: 6 hour 25 minutes – 2 people on each call (minimum)	12:50
Research: 10 hours	10:00
Face to Face: 18 hours (*Excluding travel time – 2 trips – 3 people meeting per trip – minimum -3 HOURS PER TRIP)	18:00
Preparation of documents and submitted materials: 10 hours	25:00
Toral pre-Hearing time:	**65:50**
23/24 time: 30 hours	

24/25 time: 35:30 hours	

21. Hearing preparation time – 80 hours by all four inputting.

Telephone calls: 23 Hours 36 minutes – 2 people on each call (minimum)	47:12
Research: 20 hours	20:00
Face to Face: 36 hours (*Excluding travel time – 2 trips – 3 people meeting per trip – minimum -3 HOURS PER TRIP)	36:00
Preparation of documents and submitted materials: 24 hours – Typing, proof reading, Printing, compiling,	24:00
Toral pre-Hearing time:	**127:12**

22. Post hearing (Dealing with the outcome of the trial, the appeal by Mr May and preparation time order)

Telephone calls: 7 hour 29 minutes – 2 people on each call (minimum)	14:58
Research: 5 hours	5:00
Face to Face meetings	0:00
Preparation of documents and submitted materials: 4 hours	4:00
Toral pre-Hearing time:	**23:58**

23. Total time being submitted in support of this claim is 202 hours
24. Total cost based on annual rate is as follows:

Pre-hearing preparation (January to July)	2023/24 time @ £43 per hour 2024/25 time @ £44 per hour	30 Hours 35 hours 30 minutes	£1,290.00 £1,562.00
Hearing preparation	2024/25 time@ £44	127 hours 12 minutes	£5,596.80

Post hearing	2024/25 time @ £44	23 hours 58 minutes	£1,054.34
Total being claimed			**£9,503.14**