Case Number: 3300578/2024
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3303391/2024

EMPLOYMENT TRIBUNALS

Claimant: Elise Packwood

Respondent: CP Woburn (Operating Company) Limited

Heard at: Bury St Edmunds

On: 17 and 18 December 2025 (by video)

Before: Employment Judge Graham
Mr B McSweeney
Mrs S Laurence-Doig

Representation
Claimant: Mrs Heidi Packwood (Claimant's mother)
Respondent: Mr Matt Hall (Head of People – Central Operations)

JUDGMENT having been sent to the parties and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Introduction

1. This hearing was listed to consider the Respondent's application dated 15 September 2025 for costs against the Claimant. The application is brought under Rules 74(2(a), 74(2)(b), and 74(3) Employment Tribunal Rules of Procedure 2024.

2. At the start of this hearing I read out a summary of the relevant law on costs in this jurisdiction in order to assist the Claimant as a litigant in person.

3. By way of ET1s dated 15 January, 11 and 23 March 2024, the Claimant, represented by her mother, Mrs Packwood, brought complaints of discrimination arising from disability, failure to make reasonable adjustments, harassment related to disability, and victimisation and other complaints.

4. Mrs Packwood has authored all the correspondence and conducted all the claim on her daughter's behalf. The Tribunal was concerned to establish if

these proceedings were being brought with the Claimant's consent given that the Claimant had not authored any of the documents. The Claimant was repeatedly asked by me in the liability hearing if she wished to continue, and she confirmed that she did. The Claimant has confirmed in this costs hearing that Mrs Packwood had been acting on her behalf with her consent throughout and continues to do so.

5. The Claimant has several impairments. She has been diagnosed with autism; she experiences hemiplegic migraines; delays in speech, language and understanding; she experiences anxiety; and has sensorineural hearing loss and chronic bowel dysfunction.

6. By judgment dated 9 July 2025 all of the complaints failed and were dismissed; the factual premise of many of the allegations had not been made out; and the burden of proof only shifted with respect to one allegation of discrimination arising from disability; and a number of the alleged PCPs for the reasonable adjustments complaints did not exist at all.

7. At the crux of this case is the Claimant's wish to be appointed to a role on the high ropes, a safety critical role, 10 metres in the air. The Claimant already had a substantive role in the Respondent's canteen however she went on sick leave in January 2023 and never returned to work.

8. Centre Parcs, as the Respondent in this case, had complied fully with its duties towards the Claimant under the Equality Act 2010, in many instances going beyond what the law required, and we noted that in May 2023 it acceded to every single one of the adjustments requested by Mrs Packwood for the Claimant to go back to work.

9. Upon this concession, the Claimant through Mrs Packwood still refused to return to work and insisted upon appointment to a role she knew that she was unsuitable to perform on the high ropes – unsuitable we record due to her risk of suffering hemiplegic migraines and seizures, which could have caused a serious risk to her own safety 10 metres in the air, let alone to her colleagues and to the Respondent's guests.

10. We have already found that the Claimant, through Mrs Packwood, was in breach of numerous Tribunal directions, including with respect to general disclosure, specific disclosure, the bundle, and witness statements. Much of the information provided to us by Mrs Packwood was disclosed either late, incomplete or presented in a misleading way in her own hearing bundle which was unreliable and unusable.

11. We recorded that we could not form a confident view of the Claimant's level of impairment due to Mrs Packwood's propensity to give differing accounts to different people depending upon the outcome she was seeking. This is all set out in the liability judgment, and it is not duplicated here. Nevertheless, we repeat our earlier finding that a diagnosis of autism is indicative of some level of impairment.

12. At the start of the costs hearing we were provided with the final hearing bundle of 2,561 pages, the preliminary issues bundle of 198 pages, and the costs bundle of 232 pages which included the Respondent's costs application, the Claimant's objections, and some evidence of the Claimant's

means. Mrs Packwood sent us further information over various emails, much of it appeared to be from the original hearing bundles, however we were not referred to any of these in her submissions on costs so they were not read.

Submissions

13. We received a twelve page costs application from the Respondent, and from the Claimant we received a two page objection letter. Having given the Claimant an initial 28 days in which to provide her written objections, we granted the Claimant further time and we were then provided with a thirteen page letter of objection. Both parties provided oral submissions. We have taken all of these into account. They are not repeated verbatim here but we have dealt with the relevant arguments in our conclusions below. It is nevertheless helpful if we provide a brief overview of the position of each party.

14. The Respondent says the proceedings were conducted on the Claimant's behalf with her consent, and it reminds us that we repeatedly asked the Claimant if she wished to continue and she replied that she did. The Respondent says that at no point did the Claimant disagree with Mrs Packwood in the hearing nor did she dissociate herself with what she was doing or saying; the Tribunal gave her opportunities to say if she wished to continue and she did so; the cost warning letter in August 2024 made her aware she was responsible for Mrs Packwood's actions; the Claimant was present every day for the liability hearing and earlier public preliminary hearing; she agreed the evidence of Mrs Packwood which both knew to be false; the Claimant had access to the bundles; the Claimant did not lack legal capacity and she had the capacity to end the claim but did not do so; and finally she bears responsibility for what was done in her name.

15. The Respondent refers to an advice letter dated 23 February 2024 from the Equality and Employment Law Centre to Mrs Packwood which declined to provide assistance and warning her that the claim was likely to be struck out as out of time. The Respondent says it is either not privileged (as not written by a lawyer) or privilege has been waived by Mrs Packwood who disclosed it to the Respondent. Mrs Packwood subsequently confirmed she wanted us to see it.

16. The Respondent says that Mrs Packwood has accused it of being aggressive and seeking revenge, however it says this is only the second costs application it has made in ten years; the Claimant's conduct has put it to substantial costs; and its costs are limited to matters arising after the claim was lodged, and even then it is only seeking £20,000 of the £71,000 of legal costs it has incurred, and it does not seek to recoup its internal legal costs, but rather the costs of external lawyers.

17. The Respondent says that it, and the Tribunal, provided Mrs Packwood with support on explaining the disclosure process to her. We have been referred to a detailed email from Mr Blackhall (internal solicitor) of 17 April 2024 in which he explains this to Mrs Packwood, and we are also referred to the Case Management Summary from July 2024 of Judge Wyeth where the directions were explained, and the parties were warned that if the orders were not complied with the Tribunal may strike out the claim or response;

bar or restrict participation; or award costs.

18. We were referred to the Case Management Summary of Employment Judge Cowen of March 2025 where Mrs Packwood said she had no further documents to disclose, and we have been shown her subsequent disclosure of further medical documents. The Respondent draws to our attention that it had asked for disclosure of the Claimant's Personal Independence Payment ("PIP") application, and Employment Judge Wyeth had indicated that would be relevant, and after the Claimant failed to disclose it Employment Judge Milner-More made an order for specific disclosure on 28 January 2025 which we have already found the Claimant failed to comply with. The Respondent says the conduct continues to be unreasonable even in this costs process with a lack of information about when the Claimant went on to Universal Credit.

19. The Respondent says that the most serious breach was with respect to partial disclosure of the Care Act Assessment (dealt with more fully in the liability judgment) where Mrs Packwood had deliberately left out things which would not help her case, and the Respondent reminds us we have already found that to have been unreasonable and unacceptable, together with our finding that Mrs Packwood had been rewriting documents in her bundle.

20. With respect to witness statements, by case management orders dated 28 January 2025, witness statements were due to be exchanged by 4 April 2025. Whereas the Claimant and Mrs Packwood did not attend the January 2025, the Respondent reminds us that Judge Milner-More explained in detail in writing what a witness statement should look like and contain; and the concept had already been made clear at an earlier preliminary hearing in 2024.

21. We are reminded that the Claimant still failed to exchange a witness statement even though Mrs Packwood had asked for additional time to provide one on 17 and 22 April 2025 before then not providing one at all and saying it was all in her evidence bundle she had already sent. The Respondent says that Mrs Packwood was somehow trying to convince the Respondent that she genuinely thought that sending the names of people referenced in the documents the Respondent already had, constituted exchanging witness statements, however it says that does not stand up to scrutiny; she was attempting to game the system by gaining access to the Respondent's statements without providing her own; and the process was a charade. The Respondent reminds us that we have already found this failure to exchange statements to have been unreasonable.

22. As regards the complaints' prospects of success, the Respondent refers to the liability judgment where we had found that Mrs Packwood was inventing things to complain about (particularly her complaint about not being allowed to attend meetings which was not true) [para 252]; that she had sought to mislead the Tribunal with respect to Mr Robb whom she and the Claimant claimed not to recognise even though he had conducted her health questionnaire, supervised her work and worked alongside her, and escorted both on site [para 254]; and that Mrs Packwood had made evidence up on the spot under cross examination about the Claimant's inability to do a meeting via Teams [para 255].

23. The Respondent also refers to the complaint which had been struck out on grounds of no reasonable prospects of success – this was an earlier claim for wrongful dismissal where the Claimant knew she had been paid her notice pay; as well as to the remainder of the claim which it says had no reasonable prospects of success. The Respondent relies upon the Law Centre advice letter of February 2024 advising Mrs Packwood the claim was already out of time and likely to be struck out, and the Respondent says Mrs Packwood cannot say she was unaware of the time issue; she knew where to go to get advice which she then received; she had been warned about costs; and she had ignored her own legal advice. The Respondent says that Employment Judge Wyeth had already indicated in July 2024 that anything prior to 3 October 2023 may be out of time; this was repeated by that judge again in October 2024; the Respondent's cost warning letter of August 2024 made the same point; and that Mrs Packwood knowingly persisted with complaints she knew were out of time.

24. The Respondent acknowledges that not all of the complaints were out of time (those relating to the high ropes role and the dismissal were the only ones in time) and it only seeks its costs from 8 March 2024 onwards, and it says that by not pursuing the out of time claims Mrs Packwood could have shortened proceedings and the number of issues, saving time and costs.

25. We are specifically referred to the Respondent's cost warning letter of August 2024 which put the Claimant on notice that she would be responsible for the costs of the conduct of the claim by Mrs Packwood; it said that its time and resources were being deliberately wasted in the proceedings; the legal costs were made explicitly clear to the Claimant; the time issues were addressed; the Claimant was again encouraged to comply with Tribunal directions; and she had been told she had not presented documents in their original form. The Respondent also refers us to two without prejudice offers it sent on 23 July 2024 (which included an offer of a small payment) and 14 February 2025 (to waive costs) in order to try and resolve the matter, and to preserve its legal costs.

26. As to vexatious conduct, the Respondent draws our attention to Mrs Packwood's letter of 24 June 2024 in which she said she was presenting 1,628 acts of disability discrimination against the Respondent. The Respondent says that this equates to fifty claims per shift completed by the Claimant, and on any reading this was vexatious conduct designed to cause annoyance, intimidation, worry and was wholly vexatious. We are further reminded that the schedule of loss prepared by Mrs Packwood was seeking £474,260.01 from the Respondent.

27. As to the Respondent's costs, it tells us that its costs were proportionate; it made use of internal lawyers where it could; it has not claimed for in-house legal costs; where external lawyers were used they were proportionate and necessary; counsel was selected at the appropriate level and their fees were reasonably and necessarily incurred; the Respondent attempted to resolve the claim and attempted to limit its costs; and the Claimant through Mrs Packwood directly caused its legal costs.

28. Mrs Packwood for the Claimant tells us that with respect to compliance with Tribunal orders, she has been trying to get across to others the impact of

autism upon the Claimant; that there had been a lack of understanding by the Respondent; Mrs Packwood and the Claimant had tried to put everything in the right order and were unfamiliar with legal language; and she had not criticised anyone in particular. Mrs Packwood said that the Tribunal had been exasperated by her; and there had been lots of criticism of her by the Respondent about her letter of June 2024 which was the provision of further and better particulars of claim where she had been accused of sending too much. Mrs Packwood said it had been hard for them to understand where they had been going wrong and they had been following the advice of ACAS and the CAB; the Respondent had a lack of awareness and training on autism and she could have come in and provided training to them; and there had been failures to provide the Claimant with support. Within her written objections, Mrs Packwood also made complaints of earlier mismanagement of the claim by the Employment Tribunal. I explained to Mrs Packwood that no-one had been exasperated by her - neither in the liability hearing, nor in the costs hearing.

29. Mrs Packwood maintained earlier criticisms that the Respondent's Occupational Health doctor had not been qualified to deal with the Claimant.

30. As regards disclosure, Mrs Packwood said she did not have to discuss the Claimant's PIP payments. When I put it to her she had been ordered to provide disclosure of this by Employment Judge Milner-More, Mrs Packwood told me she did not have copies of the paperwork, she had not kept a copy of the application she made, and she was only sent the award. The Tribunal noted that despite the order for specific disclosure, Mrs Packwood appeared not to have taken any steps to comply, nor did she disclose the award.

31. As Mrs Packwood's oral submissions strayed into criticisms of the Respondent and re-litigating the original claim, I urged her to focus on the specific points being made by the Respondent in its application for costs, asking her to address the directions it says she failed to comply with. I asked Mrs Packwood about the Care Act Assessment, and I asked her to explain why she says it was not disclosed in full. Mrs Packwood told me that no-one here would have understood it; that only someone qualified or a neurologist could comment on it; and she did not have to disclose it to the employer under the Equality Act 2010. I pressed Mrs Packwood further explaining it would have been relevant to our decisions, and the Respondent was entitled to see the contents. Mrs Packwood maintained she had been right to withhold it, she said it was irrelevant in her view as it had nothing to do with the job the Claimant had applied for, and it was "silly" for us to be asking her about it.

32. As to witness statements, Mrs Packwood said that she found the requirement to be very confusing; she did not understand the layout; she had no access to computers; and she referred to a domestic incident in January 2025 where they left the family home at some point.

33. As to the claim's prospects of success, Mrs Packwood said that the legal advice they received only related to two or three complaints they mentioned, and in any event she was told her claim had 49% prospects of success. I asked Mrs Packwood where that appeared in the letter and she referred me to a reference to the Law Centre not being able to support someone unless

there were 51% prospects of success. I put it to Mrs Packwood that she was not therefore being told it had 49% prospects of success, rather she was being told it did not have 51% which is not the same thing. Mrs Packwood maintained that it did.

34. Mrs Packwood told us she offered to provide the Respondent with training on autism which was not accepted, and she criticised the Respondent for not sorting out the claim earlier by not having conciliated or mediated the claim. Mrs Packwood said she had been doing all she could to prevent the claim going to court; she had been following guidance from others; and she was acting on her belief.

35. The Respondent replied to Mrs Packwood's submissions and said that the Claimant through Mrs Packwood does not provide a plausible explanation and the matters she relies upon are wholly irrelevant, in particular their medical circumstances which did not cause them to bring nor to continue with the claim, nor were the medical circumstances responsible for the manner the claim was pursued including the failure to comply with directions, nor did it impact their understanding of the claim's prospects of success.

36. The Respondent disputes the Claimant had a lack of awareness as she was made aware repeatedly about the failure to comply and lack of prospects, and the Respondent reminds us about the threats made by Mrs Packwood to the Respondent and in correspondence often quoting the Equality Act 2010. The Respondent says that the family's current arrangements and domestic situation are not connected with the issues we need to decide today, and a great deal of the costs in this case and the behaviour complained of, arose before the family's domestic circumstances changed. The Respondent also refers us to the evidence as to the Claimant's means and her bank statement, and it says the Claimant appears to have intentionally disposed of £1,800 of cash assets at the end of the liability hearing.

37. We then moved on to deal with the issue of the Claimant's means. On 7 October 2025 I had provided directions for today's hearing which included:

"The Claimant should include a statement of her current income, assets and liabilities, together with any supporting documents for inclusion in the hearing bundle. The Claimant may wish to seek independent legal advice concerning the Respondent's application."

38. Mrs Packwood provided some limited information which included bank statements for part of September 2025, as well as October and November 2025; a telephone bill and a mileage calculator. Mrs Packwood also provided details of the Claimant's savings and Universal Credit income, as well as her income from four part time football coaching roles. Nothing was included about PIP payments and I had to repeatedly press Mrs Packwood to tell me what was received, for what purpose, and where it was paid. This was for the Claimant's own benefit so we could get a proper understanding of her means. These payments for PIP amounted to £800 a month which we would not otherwise have known about had we not raised the issue. Mrs Packwood maintains that the information is not relevant.

39. We now understand that the Claimant is in receipt of state benefits to the sum of £1,142.70 per month (comprised of Universal Credit and two PIP payments), as well as income from her four coaching roles of £380 per month, and the Claimant has an ISA with a balance of £2,800, and a further £1,800 was purportedly transferred out after the last hearing towards a car. The Claimant's PIP mobility component goes to Motability for a car, and the PIP daily living component goes direct to Mrs Packwood for living costs. We calculate the Claimant has between £600-£630 of available income per month after paying for her mobile, wifi, and gym, based upon what Mrs Packwood has told us.

Law

40. The Overriding Objective of the Employment Tribunal is set out at Rule 3 of the Employment Tribunal Rules of Procedure 2024 and is as follows:

"Overriding objective

3.— (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes, so far as practicable—

(a) ensuring that the parties are on an equal footing,

(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues,

(c) avoiding unnecessary formality and seeking flexibility in the proceedings,

(d) avoiding delay, so far as compatible with proper consideration of the issues, and

(e) saving expense.

(3) The Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules, or

(b) interprets any rule or practice direction.

(4) The parties and their representatives must—

(a) assist the Tribunal to further the overriding objective, and

(b) co-operate generally with each other and with the Tribunal."

41. Rule 74 provides:

"(1) The Tribunal may make a costs order or a preparation time order (as appropriate) on its own initiative or on the application of a party or, in respect

of a costs order under rule 73(1)(b), a witness who has attended or has been ordered to attend to give oral evidence at a hearing.

(2) The Tribunal must consider making a costs order or a preparation time order where it considers that—

(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings, or part of it, or the way that the proceedings, or part of it, have been conducted,

(b) any claim, response or reply had no reasonable prospect of success, or

(c) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which that hearing begins.

(3) The Tribunal may also make a costs order or a preparation time order (as appropriate) on the application of a party where a party has been in breach of any order, rule or practice direction or where a hearing has been postponed or adjourned."

42. It is clear from the wording of Rule 74 that costs remain discretionary and the word "must" only requires the Tribunal to consider whether to make a such an order in the circumstances identified. It does not follow that we must make that award.

43. Rule 76 provides:

"The amount of a costs order

(1) A costs order may order the paying party to pay—

(a) the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party;

(b) the receiving party the whole or a specified part of the costs of the receiving party, with the amount to be paid being determined—

(i) *in England and Wales, by way of detailed assessment carried out either by a county court in accordance with the Civil Procedure Rules 1998, or by the Tribunal applying the same principles..."*

44. Rule 82 provides in that in deciding whether to make a costs order (and when determining the value of the order) the Tribunal may have regard to the paying party's ability to pay.

45. The approach to be followed when dealing with an application for costs was helpfully set out in ***Millin v Capsticks LLP*** **UKEAT/0093/14/RN** at paragraph 52. In summary there are three stages, first the tribunal must be of the opinion that the paying party has behaved in a manner referred to in the Rules, but if of that opinion, it does not have to make a costs order. It has still to decide whether, as a second stage, it is "appropriate" to do so. In reaching that decision it may take account of the ability of the paying party

to pay. Having decided that there should be a costs order of some amount, the third stage is to determine what that amount should be.

46. The fact that a party is a litigant in person is a relevant consideration even at the first stage when determining whether any of the grounds for an order are made out. The EAT has cautioned tribunals not to apply professional standards to lay people and reminded tribunals that even where the thresholds are met the Tribunal still has a discretion whether to award costs - ***AQ Ltd v Holden*** **[2012] IRLR 648** (at paragraph 32). Nevertheless, a cost order can be made against an unrepresented party, including where there is no deposit order in place and even in the absence of a costs warning – ***Vaughan v London Borough of Lewisham*** **IRLR 713**.

Conduct – Rule 74(2)(a)

47. As regards vexatious, abusive, disruptive or otherwise unreasonable conduct, the term vexatious has been held to mean the bringing of a hopeless claim not with any expectation of recovering compensation, but brought out of spite to harass the employer or for some other improper motive – ***ET Marler Ltd v Robertson*** **[1974] ICR 72**. However, being misguided is not the same as vexatious or unreasonable – ***Holden*** (at paragraph 38).

48. In ***Scott v Russell*** **[2013] EWCA Civ 143, CA** the Court of Appeal endorsed a wider definition of vexatious as espoused by Lord Bingham in ***Attorney General v Barker*** **[2000] 1 FLR 759, QBD** as follows - *"the hallmark of a vexatious proceeding is… that it has little or no basis in law (or at least no discernible basis); that whatever the intention of the proceedings may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant, and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process.*" The implication from that definition is that it is the effect of the conduct which is key rather than the motivation behind it.

49. There is no definition of abusive or disruptive conduct within the Rules, however in the case of ***Garnes v London Borough of Lambeth*** **EAT 1237/97**, the EAT upheld a costs order on this basis where it had included conduct that was frivolous and involved failure to comply with orders and delays, oppressive behaviour and seeking to ambush the other party in the hearing.

50. As regards unreasonably bringing or conducting proceedings, the word unreasonable should bear its ordinary English meaning and is not to be interpreted as something similar to vexatious – ***Dyer v Secretary of State for Employment*** **EAT 183/83**. Whereas a tribunal should take into account the nature, gravity and effect of a party's unreasonable conduct, it does not mean that each should be considered separately – ***Yerrakalva v Barnsley Metropolitan Council and another*** **[2012] ICR 1398** (at paragraph 41). It will be for the tribunal to look at the full picture of the conduct, identifying the specific conduct, what was unreasonable about it, and what effect that conduct had.

51. In ***Yerrakalva*** the court clarified that whereas causation is a relevant factor it is not necessary for a tribunal to determine whether there was a precise causal link between the unreasonable conduct in question and the specific costs being claimed, and as indicated above, it is not a requirement for a tribunal to dissect a case in detail and compartmentalise the relevant conduct under separate headings such as nature, gravity and effect. The tribunal's task will be to look at the whole picture of what happened 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 affect it had. Subsequent cases have again encouraged tribunals not to go beyond an appropriate broad brush first instance assessment or to adopt an overly-analytical approach.

No reasonable prospects of success – Rule 74(2)(b)

52. The test as to whether a claim had any reasonable prospects of success is an objective one, the fact that the claimant genuinely believed that she was correct is immaterial, the key question is whether the claimant had any reasonable grounds for so thinking – ***Vaughan*****.**

53. It may be a relevant factor for a tribunal to consider whether the paying party has received legal advice or is acting as a litigant in person. Costs may be awarded from the point at which it was clear that the claim had no reasonable prospects of success and this requires careful analysis of when that occurred. The Tribunal should consider the overall picture available to a claimant at the outset, for examples as regards the strengths and weaknesses for competing explanations for the conduct complained of – ***Keighley v Age UK Leeds*** **EAT 0229/19**. It might also be appropriate to consider when the documentary evidence became available to the claimant.

54. In ***Beynon and others v Scadden and others*** **[1999] IRLR 700** the court held that at paragraph 8:

"A party who, despite having had an apparently conclusive opposition to his case made plain to him, persists with the case down to the hearing in the 'Micawberish' hope that something might turn up and yet who does not even take such steps open to him to see whether anything is likely to turn up, runs a risk, when nothing does turn up, that he will be regarded as having been at least unreasonable in the conduct of his litigation."

55. When determining reasonable prospects of success the tribunal must consider each cause of action separately – ***Opalkova v Acquire Care Ltd*** **EAT 0056/21** (at paragraphs 21 and 27). It may be appropriate to consider whether the claim had no reasonable prospects of success when submitted, or did it reach a stage where it had no reasonable prospect? Secondly at the stage when the claim had no reasonable prospect of success, did the claimant know that was the case? Thirdly, if not, should the claimant have known?

56. The test is whether the claim had no reasonable prospects of success, judged on the basis of the information that was known or reasonably available from the start – we must consider how the prospects of success in a trial that has yet to take place would have looked. We should consider what information was available at that time. The fact of a factual dispute

which can only be resolved by hearing evidence and finding facts does not preclude a tribunal from finding that the claim had no reasonable prospects of success from the outset – ***Radia v Jefferies International Ltd*** **EAT 0007/18**. The questions to be asked are:

i. Did the complaints in fact have no reasonable prospects of success?
ii. Did the Claimant in fact know or appreciate that?
iii. Ought they reasonably to have known or appreciated that?

57. In ***Saka v Fitzroy Robinson Ltd*** **EAT 0241/00** the EAT referred to the:

"very real difficulties which face a claimant in a discrimination claim", that there is often a lack of overt evidence and so "it may be and often is very difficult for the claimant to know whether or not he has real prospects of success until the explanation of the employer's conduct which is the subject of complaint is heard, seen and tested" [10]

Breach of any order, rule or practice direction – Rule 74(3)

58. Under Rule 74(3) the Tribunal has the discretionary power to make a costs order or preparation time order (PTO) against a party who has breached an order, rule or Practice Direction. There is no need to find that a party has acted 'vexatiously, abusively, disruptively or otherwise unreasonably'. It is sufficient that he or she is clearly responsible for the breach of an order, rule or Practice Direction.

Stage two – exercise of the discretion

59. A tribunal has a discretion whether to make an order for costs if a ground is made out, the tribunal is not obliged to do so. The burden rests with the party who is applying for costs to establish that the costs jurisdiction is engaged. Cost orders are fact specific and should be dealt with as summarily as possible therefore issue based costs orders are to be avoided. We must take into account all that which appears relevant and disregard that which is not.

60. In ***Yerrakalva*** the court reiterated that it remains the case that cost orders in the Tribunal are rare, they are the exception and not the rule and further:

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

61. It was held in ***Gee v Shell UK Limited*** **[2003] IRLR 82**:

"35. It is nevertheless a very important feature of the employment jurisdiction that it is designed to be accessible to people without the need of lawyers, and that — in sharp distinction from ordinary litigation in the United Kingdom — losing does not ordinarily mean paying the other side's costs…"

62. Moreover as per ***Lodwick v Southwark London Borough Council*** **[2004] ICR 884** (at paragraph 23) costs are compensatory for the receiving party

and are not intended to be punitive on the paying party. Given their compensatory nature that will involve consideration of the loss sustained and these should be limited to those which are reasonably and necessarily incurred.

63. When determining whether to exercise our discretion we may have regard to the paying party's ability to pay. It is unnecessary for the assessment of means to be limited to the date when the order falls to be made, and the fact that the ability to pay is currently limited does not preclude a costs order being made where there is a realistic prospect that the paying party may be able to afford to pay at some point in the future – ***Vaughan*.**

64. It may again be appropriate at this second stage to consider the position of the paying party or whether they had outside support (for example from a trade union) when considering whether to make an order.

65. The fact that a costs warning has been issued by a party is a relevant factor to take into consideration although it is not a pre-condition for an order to be made. It may be relevant factor to consider whether the party seeking costs applied for a preliminary hearing for a strike out of the claim or a deposit order in the alternative.

66. It may be a relevant factor to consider the extent to which a party has acted under legal advice – ***Brooks v Nottingham University Hospital NHS Trust* EAT 0246/18**. It may be appropriate to exercise the discretion in favour of a costs order where a party unreasonably fails to take legal advice and persists with a hopeless claim to a final hearing. The fact that a party is unrepresented may be a relevant factor to consider in the exercise of discretion – ***Holden***, and that a tribunal should not judge a litigant in person by the same standards of a professional representative and it was further held:

"32… lay people are likely to lack the objectivity and knowledge of law and practice brought by a professional legal adviser. Tribunals must bear this in mind when assessing the threshold tests in rule 40(3) . Further, even if the threshold tests for an order for costs are met, the Tribunal has discretion whether to make an order. This discretion will be exercised having regard to all the circumstances. It is not irrelevant that a lay person may have brought proceedings with little or no access to specialist help and advice.

33. This is not to say that lay people are immune from orders for costs: far from it, as the cases make clear. Some litigants in person are found to have behaved vexatiously or unreasonably even when proper allowance is made for their inexperience and lack of objectivity…"

67. The Tribunal Rules do not oblige tribunals to remind parties that they are at risk of costs, and the judicial sift stage under Rule 27 only considers whether there are arguable complaints and defences.

68. Whereas within the civil courts the rule in ***Calderbank v Calderbank* [1975] 3 All ER 333** provides that where a claimant succeeds but fails to obtain damages equivalent or greater than a settlement offer, they become liable for the other side's costs from the date the offer is rejected, this has no place within the Employment Tribunal. Nevertheless, the rejection of settlement

offers may be a relevant factor when considering whether to exercise the discretion to award costs – ***Kopel v Safeway Stores plc*** **[2003] IRLR 753**.

69. Again, and as per the decision in ***Fitzroy Robinson***, it may also be appropriate to consider the nature of the evidence available to the claimant and also the nature of the claim, and whether it would be reasonable for the claimant to test the evidence at a final hearing. It may only be at a final hearing that a claimant can understand whether they have any prospects of success once the employer's conduct is explained and tested. In ***Vaughan*** the claimant had made allegations of discrimination, harassment and whistleblowing which were complicated, however the costs threshold was crossed because of the claimant's fundamental unreasonable appreciation of the behaviour of her employer and colleagues rather than due to her lack of experience.

Stage three – the amount of the order

70. We remind ourselves that cost orders should be compensatory in nature not punitive. It is necessary to consider what loss has been caused to the receiving party and costs should be limited to those reasonably and necessarily incurred – ***Yarrakalva***. Even where a loss is identified, it is still necessary to take into account other factors such as the conduct of the parties, and the tribunal may take into account the means of the paying party. Means includes income, expenditure and capital or assets including property – ***Shields Automative Ltd v Grieg*** **UKEAT/0024**/10 [47].

71. Where means are taken into account a tribunal should record its findings about the ability to pay a costs order. Where means are not taken into account a tribunal should explain why – ***Jilley v Birmingham and Solihull Mental Health NHS Trust*** **UKEAT/0584/06**.

72. A tribunal is not required to limit costs to an amount the paying party can afford to pay – ***Arrowsmith v Nottingham Trent University*** **[2012] ICR 159** as that party's circumstances may well improve. The likelihood of an improvement in circumstances may be a relevant factor to consider, and in ***Vaughan*** an order was upheld even though the claimant could not presently meet a substantial payment however there was a realistic prospect that she might be able to do so in the future. Whatever order is made would need to be enforced in the county court which can take into account means from time to time.

73. The tribunal may make an award of unassessed costs which cannot exceed £20,000, or it may make an order for detailed assessments of costs for which there is no limit which must be determined in accordance with the Civil Procedure Rules.

74. The reference to unassessed cost does not mean that the figure should be entirely arbitrary and it should be in respect of costs incurred by the receiving party therefore the tribunal must state on what basis it is awarding any sum of costs; on what basis it arrives at the sum; and why costs are being awarded against the party in question - ***Sumukan (UK) Ltd and another v Raghavan*** **EAT 0087/09**.

Acting on behalf of another party

75. In ***Bennett v London Borough of Southwark*** **[2002] EWCA Civ 223** it was held:

"First, the manner in which a party's proceedings are conducted is not the same thing as, though it may well be evidenced by, the behaviour of the party's representative. What the rule is directed to, it seems to me, is the conduct of proceedings in a way which amounts to an abuse of the tribunal's process: abuse is the genus of which the three epithets scandalous, frivolous and vexatious are species. Secondly, what is done in a party's name is presumptively, but not irrebuttably, done on her behalf. When the sanction is the drastic one of being driven from the judgment seat, there must be room for the party concerned to dissociate herself from what her representative has done. A principal can always prove a want of actual authority, and I do not believe that the advocate's ostensible or implied authority, large as it is, extends (at least in the absence of ratification) to abusing the judicial process." [26]

76. The court in ***London United Busways Limited v Dankali*** **[2023] EAT 123** examined the issue of where questions may arise as to whether someone is acting with the authority of party, and what steps may be open to a tribunal. It was held:

"In general, when a tribunal is presented with a situation in which there may be some concern as to whether a representative has sufficient current instructions or authority, it will be a matter for the judgement of the judge concerned as to how to manage that concern. There are a range of tools available to the judge confronted by such a situation, who considers that some further steps need to be taken to investigate it. These might include requiring written or other forms of evidence to support assertions that there is sufficient authority or instructions, or could include, in certain circumstances, the tribunal seeking to communicate directly with the party concerned as well as with the representative." [55]

Conclusions

77. We will now address each of the grounds upon which the Respondent seeks costs, taking into account the submissions from both sides. We remind ourselves throughout our decision making that the Claimant and Mrs Packwood are litigants in person and should not be held to the same standard as a lawyer; they are not familiar with court processes and procedures and legal language; and moreover discrimination law is a complex area.

Failure to comply with Tribunal orders and rules; and unreasonable conduct of proceedings

78. Mrs Packwood had the concept of witness statements explained to her by numerous judges as well as by the Respondent. Mrs Packwood knew what was required of her, but she failed to provide a witness statement for her and for the Claimant. We reject Mrs Packwood's explanation at the time that they were not lawyers or legally experienced so did not know what to do. We reject Mrs Packwood's new explanations that she was in a different

location due to a family crisis and had no access to a computer so could not comply. Mrs Packwood has been able to conduct the case by writing long correspondence, including a 60 page schedule of loss. Someone who is able to produce a 60 page schedule of loss is in our view capable of producing a witness statement. This failure put the Respondent to unnecessary legal work and legal costs in having to engage with Mrs Packwood on the issue, and moreover it caused prejudice to the Respondent in defending this case, and it caused disruption at the final hearing as time was spent trying to address the failure. The failure to provide a witness statement was in breach of Tribunal directions, it was unreasonable and unacceptable.

79. Mrs Packwood failed to comply with the requirement to provide disclosure of relevant material, including but not limited to withholding the application for PIP payments which she could have tried to obtain if she had not retained a copy. Mrs Packwood failed to at least try to obtain this, and it would have been relevant to the issue as to the Claimant's alleged levels of impairment so that we could form a view on matters such as substantial disadvantage. This was in breach of an order for specific disclosure from Employment Judge Milner-More, and this failure to comply was also unreasonable.

80. Mrs Packwood deliberately held back parts of the Care Act Assessment and her argument today that it was not relevant is unacceptable and unreasonable, as is her other argument that she was entitled under the Equality Act to withhold information from the employer. Mrs Packwood was subject to a Tribunal order to provide disclosure of relevant documents, the contents of the entire report would have been relevant for the Tribunal to consider as it would have helped understand the level of impairment, and the Respondent was entitled to see the contents so that it could attempt to defend itself. It was in the Claimant's own interests that we should see all of that report to gain a proper understanding of her impairments – this was relevant to the legal issue of substantial disadvantage for instance.

81. The Tribunal was surprised by Mrs Packwood's ill-judged criticism of the Tribunal this week that it was being "silly" by asking her why this relevant document had not been disclosed. It is the Tribunal which is tasked with determining the level of impairment and also substantial disadvantage (as well as the something arising from disability) – these are the legal issues for a tribunal to decide.

82. It is also the Tribunal which is the final arbiter on whether documents are relevant. Parties should not cherry pick documents and provide only those documents (or extracts of them) which only help their case. We inferred there was something in that Care Act Assessment that was unhelpful to the Claimant's case that Mrs Packwood was deliberately seeking to withhold from consideration. This refusal to comply, coupled with Mrs Packwood doubling down on her position this week, was entirely unreasonable and showed exceptional disrespect to the Tribunal and its orders, and was a wilful attempt on her part to mislead the Tribunal, and was in flagrant breach of Tribunal orders.

83. The bundle produced by Mrs Packwood was unreliable and unusable because it comprised of incomplete extracts from documents heavily edited by her to create a misleading impression as to the Claimant's level of impairment. Mrs Packwood's earlier descriptions of the Claimant's level of impairment varied depending upon the outcome being sought, and the Tribunal process was no exception. In some instances where adjustments were being sought from either the Claimant's school or elsewhere, a very significant level of impairment was described, including hearing loss, the Claimant having little or no safety awareness, and only able to understand three or four words at a time. When the Claimant was seeking the high ropes role, all this had changed and Mrs Packwood sought to downplay these impairments.

84. This presented an evidential problem for Mrs Packwood whose approach was to withhold this information from her Tribunal bundle, we inferred this was done in order to improve the prospects of success of the complaints about the high ropes role, whilst at the same time seeking a significant number of adjustments from the Tribunal in order to take part in the process. The discrepancy made no sense, and the liability judgment sets out in detail why the Tribunal was unable to confidently make a finding on the true level of impairment. The Claimant clearly has some level of impairment due to mere fact of an autism diagnosis, the level of impairments from all of the conditions could not be confidently determined.

85. Other documents arrived incredibly late, and immediately before the final hearing, such as the official audiogram data sheet and the sensory impairment care plan.

86. The Respondent was put to unnecessary legal work and legal expenditure due to Mrs Packwood's unreasonable conduct and wilful failure to comply with Tribunal orders, and the Respondent repeatedly sought to engage with her to solicit her compliance with little or no success.

87. We have been referred to at least 13 instances in the hearing bundle where Mr Blackhall corresponded with Mrs Packwood about compliance with orders, however her response was not merely uncooperative, it was rude and contained inappropriate and unfounded allegations accusing him and the Respondent of defamation, slander, scandalous behaviour, ableism, discrimination by association, blatant obtrusive and crass behaviour, arrogance, delusions, manipulative and underhand behaviour, and failure to disclose documents.

88. We noted in particular:

    88.1 An email which appears to be dated 10 April 2024 in which Mrs Packwood wrote: "Mr *Blackhall's defamatory, slanderous, scandalous suggestions towards the Claimant and family, on behalf of the Respondent, in light of the pre-existing 'thousands or pages of complaints and evidence' and 'voluminous evidence about these conditions' constitutes gaslighting, and is an act discriminatory on grounds of disability and discrimination by association".*

88.2 A further email from Mrs Packwood which appears to be dated 17 April 2024 in which she writes: *"This may be a rare example of blatant, obtrusive, crass behaviour by Mr Blackhall, on behalf of the Respondent to maintain the arrogance towards disability and inclusion awareness, under a deluded belief of systematic ableism."*

88.3 An email from Mrs Packwood of 2 October 2024 in which she writes*: "The documents serve as an example of the Respondent's continued inappropriate, manipulative and underhand behaviour in these proceedings. Mr Blackhall is not representing the Respondent he is staff and make up the Respondent as seen from the need of outsourcing your legal representation."*

88.4 Further in an email dated 28 November 2024 Mrs Packwood wrote to Mr Blackhall and stated: *"We are disappointed to find you continue to act with ignorance and disregard, exploiting any disadvantage of the Claimants circumstances to your advantage as opposed to making reasonable affair and compromising arrange arrangements to meet the needs of the case."*

89. These attacks on Mr Blackhall's character (and that of others) and professional reputation, were totally inappropriate and unreasonable, not least because it was Mrs Packwood who was in breach of Tribunal directions and in many instances Mr Blackhall was politely and helpfully trying to engage and to solicit her compliance, which would have also been in the Claimant's own interests to have done so. All of this put the Respondent to unnecessary legal work and legal expenditure, although we note the Respondent does not seek to recover costs incurred in connection with its internal lawyers – nevertheless the behaviour identified demonstrates the unreasonable manner in which the entire proceedings were conducted.

90. We noted in the costs hearing that Mrs Packwood maintains that the Respondent's Occupational Health doctor was not qualified to deal with the Claimant. It appeared that Mrs Packwood's position had not altered from the liability hearing where we recall from the documents in the Respondent's and the Claimant's bundles where Mrs Packwood had accused the doctor of ignorance, a lack of clinical competence, she said he was not HSE qualified, and Mrs Packwood made repeated allegations of lack of qualifications, competence and experience. Mrs Packwood had also researched the doctor online, going over his numerous qualifications, checking Companies House and GMC records, and then shared newspaper reports over a totally unrelated case suggesting that he was in some way involved in the matter being reported on – this had no relevance whatsoever to the Claimant's case, and the Tribunal in the liability judgment found this to be unsavory and a witch hunt against the doctor who was simply doing his job.

91. Immediately before the final hearing Mrs Packwood sent a request for reasonable adjustments from the Tribunal. This was a particularly extensive list of adjustments, and whereas it is of course not unreasonable conduct for a party to seek adjustments to be made for them, this application was made incredibly late in the day, right before the final hearing in a claim which had been running for some time and had been the subject of an exceptional

amount of case management, and it could and should have been raised much earlier than it was. No explanation was provided for this late request, despite a direction to do so, and moreover many of the proposed adjustments were not necessary or reasonable in any event – such as a hearing without the Respondent and without hearing any evidence. Whereas the hearing managed to proceed on time due to pragmatic solutions by the Tribunal, considerable time was taken up dealing with it in the final hearing whereas it could have been dealt with much sooner. Again, this involved unnecessary work and lengthened proceedings.

92. Further time was wasted during the final hearing, including by Mrs Packwood's insistence on questioning the Respondent on matters she knew had already been struck out (such as the induction), as well as the time spent questioning Mr Robb whom Mrs Packwood claimed that she and the Claimant did not recognise, even though he had conducted her induction, supervised her at work, and even escorted them on site. This was a lie which was maintained in order to support an untrue allegation that the Respondent had disclosed the Claimant's personal medical information without consent, whereas it was Mrs Packwood who had waited outside of the canteen approaching a colleague and then sharing the Claimant's information. Mrs Packwood told us that neither she nor the Claimant recognised Mr Robb. This was extraordinary and unbelievable given the Claimant reported to him, worked alongside him in a shift with 3 others, and he had escorted them to site. This was one example of Mrs Packwood inventing things to complain about referred to in the liability judgment.

93. The Claimant and Mrs Packwood had been told by the Respondent that the Claimant should not undertake the high ropes training at height, nevertheless they ignored this instruction, the Claimant went on this training, and Mrs Packwood again lied to us saying the first she knew about it was from the Claimant's subject access request. This was untrue as the contemporaneous documents showed her discussing it at the time by reference to the health declaration on the Respondent's iPad where Mrs Packwood had dictated the Claimant's answers over the telephone. This was pointed out to the Claimant in the hearing and she was questioned on Mrs Packwood's account which she then supported, which meant she also told us a lie. This was not simply a case of misremembering or being misguided – it was part of a wider pattern of sticking to an untrue story even when the contemporaneous documents in their possession proved otherwise. This was further unreasonable conduct on the part of the Claimant and Mrs Packwood.

94. We also recalled Mrs Packwood's unreliable evidence to us that she had called Social Services about the Respondent not allowing her to escort the Claimant from site, and she alleged that they told her to go to the media about it. We found that evidence to be equally unreliable – it was unsupported by any corroborative evidence; there was no contact from Social Services; and it was implausible that Social Services would ever have advised any such thing.

95. Finally, Mrs Packwood's letter of 24 June 2024 to the Respondent made complaints of 1,628 different acts of discrimination comprising:

    171 Counts Direct Discrimination

129 Counts Indirect Discrimination
139 Counts Failure to Make Reasonable Adjustments
307 Counts Harassment
312 Counts Victimisation
234 Counts Aggravated Damages
10 Counts Gaslighting in the Workplace
5 Counts Job Title Fraud
Another 10 Counts Gaslighting in the Workplace
45 Counts Discrimination by Association
266 Counts Actual Breaches of Employment Contract

96. We understand this to equate to 50 different allegations per shift completed by the Claimant in the limited time she worked for the Respondent. Mrs Packwood now argues that this was simply a response to a request from the Respondent or a direction from the Tribunal to provide further and better particulars. This was no such thing, and we note it contained little or no detail in any event. The Respondent says that this letter was vexatious, and we agree as it falls squarely within the definition of vexatious conduct within the judgment in ***Barker*** referred to above. This went far beyond simply being misguided or unfamiliar with the Tribunal process or discrimination law – it was a grossly exaggerated set of complaints designed to cause intimidation to the Respondent.

97. We therefore agree with the Respondent and find that the Claimant, through Mrs Packwood who acted on her behalf, has conducted proceedings both unreasonably and vexatiously, and was in repeated breach of Tribunal orders. The above matters are merely illustrative of a far wider pattern of unreasonable conduct which is not repeated here for the sake of brevity. All of this conduct has put the Respondent to unnecessary work and expenditure of legal costs.

98. We record that with respect to the Claimant's failure to comply with Tribunal directions, it would have been open to the Tribunal to have struck the claim out for failure to comply with any or all of those directions, however we did not do so.

Prospects of success

99. We now address the issue as to whether each cause of action had any reasonable prospects of success. We of course remind ourselves that whereas each complaint failed at the final hearing, that is not of itself sufficient to merit an award of costs. Costs do not automatically follow the event in this jurisdiction unlike some other courts. We must go further and explore whether the Claimant or Mrs Packwood on her behalf would have had any reasonable grounds for thinking the complaints had reasonable prospects of success.

100. We now know that Mrs Packwood was receiving advice and guidance from various sources including ACAS, the CAB and a law centre which sent her a detailed letter of advice in February 2024. Mrs Packwood has waived privilege and we have their advice letter warning her that the claim, as she had described to them, did not meet the 51% prospects of success threshold for them to take the case on. Mrs Packwood

misrepresented this to us as saying the advice meant it had 49% prospects but that is not what it says. Mrs Packwood says that the advice only related to 2 or 3 parts of the claim, we do not know that to be the case, and we have little confidence in some of what Mrs Packwood tells us as she has been found to be an unreliable witness at the liability hearing.

101. Leaving that aside, Mrs Packwood was made aware by the Law Centre that the claims were out of time and would likely be struck out by a tribunal. Nevertheless, Mrs Packwood persisted.

102. Employment Judge Wyeth also twice made Mrs Packwood aware that the claim or parts of it were likely out of time. Nevertheless, Mrs Packwood persisted.

103. The Respondent, on a number of occasions, made Mrs Packwood aware that the claim was likely to fail and it explained why, going as far as to offer a small token payment, to induce her not to continue with the claim, and a second offer to waive costs. Nevertheless, Mrs Packwood persisted.

104. All the complaints were found to be out of time save for the Claimant's complaints about the high ropes role and her ultimate dismissal. These complaints were in time but nevertheless they failed as well.

105. We will deal with each of the causes of action, starting with the two discrimination arising from disability complaints. With respect to the Claimant's application for a role on the high ropes, a safety critical role, the Respondent had declined to appoint the Claimant to that role on medical (and safety) grounds, and the burden of proof had shifted to the Respondent which provided not merely a satisfactory explanation, but also a patently obvious and non-discriminatory explanation for that treatment having persuaded us that it had a legitimate aim of keeping people safe and the means adopted were proportionate to that end.

106. The Claimant and Mrs Packwood must have known from the start that she was unsuitable for appointment to that role given she was recorded by Mrs Packwood in a Care Act Assessment as having little or no safety awareness, and her knowledge of her propensity for hemiplegic migraines mimicking a stroke and seizures. The medical advice from the neurologist, whilst positive or supportive, had been based upon incomplete and inaccurate information from Mrs Packwood. That claim had no reasonable prospects of success and it would have been obvious to any reasonable person that the Tribunal would not decide that she ought to have been allowed to perform at height with the levels of impairment Mrs Packwood alleged the Claimant to have, as this would fly in the face of the specialist health and safety advice from experts in that field employed or engaged by the Respondent.

107. Mrs Packwood had sought to downplay the risks in the liability hearing by telling us they would never emerge as the high ropes role would be scripted. This is addressed fully in the liability judgment, but for present purposes we reiterate that the risks would be far from scripted given the anxiety and adrenaline experienced by guests at that height in such a safety critical situation. It must have been obvious to Mrs Packwood and to the

Claimant that the decision had been taken to protect the safety of the Claimant herself, and her colleagues, and the Respondent's guests, and there was a strong justification for doing so.

108. As regards the dismissal decision, this did not amount to discrimination arising from disability as the reason for dismissal was due to sickness absence due to alleged anxiety and not related in any way to the Claimant's disabilities. This would have been obvious from the earliest case management hearing that the decision to dismiss bore no relationship to the Claimant's disabilities. We further noted that the absence was also due to the Claimant's unreasonable refusal to return to work even though the Respondent had acceded to each and every one of Mrs Packwood's requested adjustments in order to get her back into work. The Claimant and Mrs Packwood would have both known early on in proceedings that whereas the complaint was in time, it had no reasonable prospects of success given she had a substantive role that she refused to return to; the Respondent had made adjustments for her to return to that role; and the Claimant had been absent for a considerable period of time.

109. As regards the reasonable adjustments complaints, many of these were based on factual premises which never existed in the first place. Of the seven alleged PCPs, only two of them were found to exist which was the requirement to be medically fit to perform the high ropes role, and secondly the requirement for the high ropes role to be performed at height.

110. We come back to the same issue as before - it was inconceivable that the Claimant or Mrs Packwood could ever reasonably believe that she would be appointed safely to that role given her alleged level of impairments including her lack of (or impaired) safety awareness; it was equally inconceivable that the complaint had any prospects of success at all. The proposed adjustment of the Respondent changing its entire rotating shift pattern to allow the Claimant to perform the role on the ground was not merely unrealistic and unreasonable, it would drive a coach and horses through the Respondent's safety protocols of rotating staff to avoid complacency. Moreover, the Claimant's impaired safety awareness meant that there was little assurance that the Respondent's guests would be kept safe even if the Claimant was limited to working on the ground getting them ready to go up at height. We also recall that staff working on the ground can be expected to go up at height to deal with an emergency at any time which would have presented the same risks to the Claimant, her colleagues and the guest.

111. It would have been obvious from the start of the claim that the complaints about the high ropes role were not going to succeed, yet Mrs Packwood persisted in bringing the complaint to trial, putting the Respondent to unnecessary legal work and legal expenditure. A number of witnesses gave evidence on this issue for the Respondent, and their statements provided a thorough and convincing explanation about the safety critical nature of the role, and the risks which would have ensued had the Claimant been appointed. Nevertheless, the Claimant persisted with this complaint right up to the final hearing, putting the Respondent to legal expenditure.

112. It would also have been obvious that the other PCPs never existed. The Claimant had been allowed to have a parental escort; there was no failure to provide safety uniforms; there was not a practice of not supplying safety shoes; the complaint about the bicycle and trailer was ever changing and the PCP was never applied to the Claimant as she was told she did not have to perform that task but Mrs Packwood insisted the Claimant wanted to do so; no-one was pushing their own work onto the Claimant, rather the Claimant was not performing all of her own role and the Respondent was content with this; and there was no failure to allow the Claimant to be accompanied to meetings. It would and should have been obvious from the start of proceedings that those reasonable adjustments complaints were destined to fail given the PCPs did not exist. These complaints ought not to have been brought, nor pursued once the legal issues had been clarified at the earlier preliminary hearings where it would have been obvious that the factual premise did not exist for them. Persisting with these complaints put the Respondent to unnecessary legal work and legal expense.

113. As regards the harassment complaints, the factual premise of many of the allegations were not made out. There was no refusal to allow the Claimant to be accompanied to meetings; likewise there was no sickness absence process. It is accurate that Ms Congerton said that the Claimant had not been offered a move, however this was not unwanted conduct, it was a statement of fact correcting a misrepresentation on the part of Mrs Packwood. The same applies to Mr Sturzaker saying he had not heard from the Claimant about rescheduling a meeting, this was not unwanted conduct it was a statement of fact. As regards rescheduling the meeting when the Claimant was overseas playing sport without applying for leave and whilst off sick from work, although the Respondent concedes it was unwanted conduct, and we disagreed, it still did not relate to the Claimant's disabilities – the obvious trigger was to discuss ways of getting the Claimant back into work and we note that the absence was not for a disability related reason in any event.

114. We find that it was abundantly clear from the start of the claim that these harassment complaints had no reasonable prospects of success. In most instances the incidents either did not happen at all, or did not pass the first hurdle of being unwanted conduct, let alone having any relationship to disability. Again, persisting with these complaints put the Respondent to unnecessary legal work and legal expenditure. These were not simply instances of being misguided – these complaints are based upon things which either never occurred in the first place, or which could not reasonably be regarded as relating to the Claimant's disabilities.

115. Finally, as regards the victimisation complaints, the factual premise of the Respondent making false allegations about the Claimant never happened and that complaint failed at the first hurdle. As regards the Claimant's dismissal, this did of course happen but it was not because the Claimant might bring a discrimination complaint in the future, it would be quite obvious to any reasonable person that the dismissal was because of the length of the Claimant's sickness absence, coupled with her unreasonable failure to return to work notwithstanding the Respondent had acceded to every one of Mrs Packwood's required adjustments for the Claimant to return to work in her substantive role.

116. Mrs Packwood insisted on the Claimant being appointed to a role she knew, and the Claimant knew, she would not be safe to perform and there were no adjustments which could remedy that risk. The decision to dismiss was not tainted by any form of discrimination and both the Claimant and Mrs Packwood must have known this to be the case from the commencement of the litigation. Persisting with this claim put the Respondent to unnecessary legal work and legal expenditure.

117. The Respondent says its legal costs were £71,000 but it is only seeking £20,000 and from the point at which it had to utilise external lawyers from 8 March 2024. We record that by March 2024 it would have been clear to Mrs Packwood and the Claimant that these complaints had no reasonable prospects of success, and they were routinely made aware throughout the life of the case, with the Law Centre advising that they were out of time, the Respondent making its own position clear in a cooperative and reasonable way; and finally Employment Judge Wyeth also raising the time issue. As in the case of ***Scadden*** to which we have referred to above, it was unreasonable for Mrs Packwood and the Claimant to have persisted with the case to the final hearing in the knowledge that nothing was going to turn up to improve the prospects of success.

118. We are not persuaded that Mrs Packwood's and the Claimant's medical conditions had any impact upon their understanding as to the merits as this was explained to them repeatedly. We are not persuaded that the family's current home arrangements had any bearing on the manner in which proceedings were conducted, nor on their repeated failure to comply with directions, not least because of Mrs Packwood's intransigence before us this week that she decided that parts of the Care Act Assessment were not relevant and she would not share it despite being under a direction to disclose all relevant material. Moreover, a great deal of the unreasonable conduct occurred before the change in the family situation at home. Whereas we acknowledge that neither Mrs Packwood nor the Claimant are lawyers and they should not be held to the same standards, they would have known that many of the things they sought to complain about had not happened, and they would have known the complaints about the high ropes role in particular were destined to fail at a final hearing.

119. For the reasons we have given, we are satisfied that the grounds for consideration of an order for costs under Rules 74(2)(a), 74(2)(b) and 74(3) are made out. We move on to stage two.

Stage two

120. We remind ourselves that costs are discretionary, they are the exception and not the rule. We also remind ourselves to look at the whole picture of what happened in this case. We further remind ourselves that costs are intended to compensate – they are not intended to punish, and we have no power to punish people for their conduct – our focus is limited to compensating for wrongdoing and nothing further beyond that.

121. Mrs Packwood has sought to blame everyone else but her and the Claimant for the present situation, blaming the Respondent for its alleged conduct of proceedings, for not settling the claim or conciliating; blaming the

Tribunal for mismanagement of the case; and suggesting that no one was listening to them about the effects of autism.

122. The reality is that the Respondent complied fully with the Overriding Objective of the Tribunal in the conduct of litigation, both in the lead up to the final liability hearing, during the final liability hearing, and now during this costs hearing. Conversely, Mrs Packwood and the Claimant have not complied with the Overriding Objective by their failure to cooperate with the Respondent and the Tribunal. The Tribunal had made numerous adjustments for the Claimant and Mrs Packwood – the matter was the subject of repeated preliminary hearings and extensive case management, taking the time to explain matters to them, slowing down proceedings, providing repeated breaks and additional time, checking their understanding, and giving them the opportunity to have their say and provide their version of events.

123. Regrettably Mrs Packwood's explanations about the failure to provide witness statements and to provide full disclosure, and her propensity to mislead and to blame everyone else and not to take any personal responsibility for the manner in which proceedings have developed, are factors we take into account when deciding whether to exercise our discretion.

124. Whereas litigation is by its very nature adversarial, it is not open warfare and should not be conducted as such. The Respondent has been measured in its approach. Mrs Packwood had the opportunity this week to explain why she had not conducted proceedings unreasonably or vexatiously; why she had failed to comply with Tribunal directions and rules; and why the claim had reasonable prospects of success. Instead, Mrs Packwood has resorted to repeating unjustified personal attacks on the Respondent and its lawyers, accusing them of being vengeful, aggressive, threatening, malicious and guilty of ableism. None of this is true, but it is a repeat of a previous pattern of behaviour from the original hearing with Mrs Packwood seeking to deflect, to obfuscate, to criticise and to attack, rather than focussing on the legal issues before us. It is unfortunate that the previous unreasonable conduct continues to be repeated before us today in the costs hearing.

125. We take into account the fact that the Claimant and her mother are litigants in person, but they were in receipt of legal advice which advised against litigation on grounds of time; both would have known that the factual premise of some of their allegations did not exist but nevertheless they persisted; the Claimant was and remains a young person; she has some level of impairment; she is not in full time work but she is undertaking four coaching roles weekly; she has savings of £2,800 and is in receipt of state benefits. Mrs Packwood's disclosure with respect to state benefits was incomplete, she had to be repeatedly asked about the Claimant's income, the value and where it was paid, very little of this was volunteered by her in the first instance, I had to ask repeated questions of her to discover the full picture, including directing her to provide additional information over night. Mrs Packwood failed to mention anything at all about PIP payments until I raised these with her, and this revealed an additional monthly income of around £800. This lack of candour on the part of Mrs Packwood makes it difficult to have confidence in what she is telling us, nevertheless where we

are provided with evidence of means we should take it into account and we do so.

126. There is some prospect of the Claimant's income improving in future, and the fact that she is able to combine four coaching roles each month is a positive sign.

127. The Claimant has little expenditure of her own, she pays for a gym membership and mobile telephone, one of her PIP payments is paid direct to Mrs Packwood which is used for food and bills. Another PIP payment is paid direct to Motability but that is the Claimant's choice in order to pay for a car. The Claimant is left with Universal Credit and also income from her four coaching roles.

128. Around £1,800 was removed from the Claimant's bank account after the last hearing, leaving the current £2,800. Mrs Packwood says this was a payment for the Claimant's car.

129. The claim was conducted by Mrs Packwood however it was done on behalf of the Claimant with her consent, and we repeatedly checked she wished to continue and she confirmed that she did. At no point has the Claimant sought to distance herself from her mother's conduct of these proceedings, she has taken an active part in them and agreed with some of Mrs Packwood's evidence which we found to be untrue.

130. We have taken into account all that appears relevant to us which comprises the Claimant's age, her impairments, her savings, her ability to earn income through various roles, the Claimant's understanding of proceedings and her consent for Mrs Packwood to act on her behalf, the unreasonable and vexatious manner in which proceedings were conducted, the flagrant breach of Tribunal orders and directions, and the lack of reasonable prospects of success of the complaints which would have been clear from the start or very early on in proceedings. The Claimant through Mrs Packwood had numerous opportunities to resolve proceedings, including two offers of settlement. These proposals were not accepted and the Claimant persisted with the claim right up to the final hearing.

131. Regrettably, this is one of the rare cases where the threshold for making a costs order has been met, not just on one ground, but with respect to each and every one of the grounds relied upon by the Respondent under Rules 74(2)(a), 74(2)(b) and 74(3). It is significant to us that Mrs Packwood was advised against proceeding by an external Law Centre yet she carried on. It is also significant to us that there was a wilful intention not to comply with Tribunal directions and to mislead. We readily acknowledge that being misguided is not the same as being unreasonable or vexatious, but in this case the conduct went far beyond being misguided - there was a deliberate attempt to mislead and to misrepresent, and this put the Respondent to unnecessary legal work and legal expenditure and this has weighed heavily as a factor in our decision to exercise our discretion.

132. We are therefore minded to exercise our discretion and to make an award of costs in favour of the Respondent.

Stage three

133. We now have to determine the appropriate amount of the award. The Respondent is seeking £20,000 of the £71,000 of legal costs it has accrued. In our summary assessment, we find that those costs were reasonably and necessarily incurred in defending this matter. The Respondent has taken a proportionate and a pragmatic approach to costs, keeping expenditure to a minimum but having to repeatedly engage with Mrs Packwood to solicit her compliance with directions to little or no avail. It was necessary to instruct external lawyers at a certain point in the litigation, as well as counsel at an appropriate level of seniority. The Respondent had to produce statements on behalf of ten witnesses to deal with the range of allegations brought by the Claimant. The case necessitated an 8 day hearing including oral judgment. The total level of legal costs was far higher than that being claimed.

134. We again take into account the Claimant's means. The Claimant is in receipt of state benefits to the sum of £1,142.70 per month; she has income from her four coaching roles of £380 per month; and the Claimant has an ISA with a balance of £2,800, and a further £1,800 was purportedly transferred out after the last hearing towards a car. The Claimant's PIP mobility component goes to Motability for a car, and the PIP daily living component goes direct to Mrs Packwood for living costs. We calculate the Claimant has between £600-£630 of available income per month after paying for her mobile, wifi, and gym, based upon what Mrs Packwood has told us.

135. Whereas the sum sought by the Respondent is considerable, it has been reasonably and necessarily incurred due to the unreasonable and vexatious conduct on the part of the Claimant through Mrs Packwood; the Respondent had to defend complaints which had no reasonable prospects of success and which Mrs Packwood had been independently advised against pursuing, at least those parts she discussed with external lawyers; and the Respondent's costs were increased due to the flagrant repeated breaches of tribunal directions.

136. Clearly the Claimant cannot afford all the £20,000 sought today, even though we find Mrs Packwood to be less than candid with us about the Claimant's means. Nevertheless, the Claimant is able to work, she is clearly able to accrue savings, and she lives at home and has very little in the way of bills to meet. The Claimant's income is likely to improve in the future if she continues her coaching and/or returns to full time to employment – there was no evidence that is not possible.

137. Whereas the sum sought has been reasonably and necessarily incurred, we remind ourselves it does not automatically follow that we must award the full amount sought – we still retain a discretion as to what to award. We have kept open the option to award a lesser sum, however we note that it will be a matter for the Respondent if, and when, it seeks to enforce an award of costs, and any enforcement through the county court will take into account the ability to pay.

138. Accordingly, we therefore award the Respondent the full costs sought of £20,000.

Approved by:

Employment Judge Graham
29 December 2025

JUDGMENT SENT TO THE PARTIES ON
4 February 2026
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FOR THE TRIBUNAL OFFICE