Case Number: 2302681/2024

EMPLOYMENT TRIBUNALS

Claimant: **Ms J Zhang**

Respondent: **St. Paul's School**

Hearing: **On the papers, concerning hearing at London South 2-5 Dec 2025.**

DECISION ON APPLICATION FOR A SUMMARY COSTS ORDER

Application made under Rule 74(2) of the Employment Tribunals Rules of Procedure 2024.

The application for a summary costs order is refused.

Application

1. The Respondent, via its representative, applies for a summary costs order on the basis that the Claimant conducted proceedings unreasonably; she is alleged to have pursued claims with no reasonable prospects, made excessive and unnecessary applications, advanced unfounded allegations, failed to develop her discrimination case, misdirected her unfair dismissal case, maintained unrealistic settlement expectations, and behaved disruptively at the Final Hearing. Costs exceeding £20,000 are said to have been incurred, with a contribution sought by summary assessment.

2. The Claimant opposes the Respondent's application, alleging that costs were driven by the Respondent's procedural misconduct, including their failure to comply with Tribunal orders and the unilateral compilation of evidence. The Claimant submits that, in the interests of justice, the Respondent's costs application should be refused.

LAW

3. The Tribunal's power to award costs arises from Rule 74(2) of the Employment Tribunals Rules of Procedure 2024, which provides that the Tribunal may make a costs order where it considers that a party (or their representative)

has acted vexatiously, abusively, disruptively, or otherwise unreasonably, or where a claim or response had no reasonable prospect of success on the evidence available. Rule 74 continues the long-established principle that costs do not follow the event in employment tribunal proceedings and that the power to award costs is discretionary and exceptional.

4. The exercise of the costs discretion is a two-stage inquiry: first, the Tribunal must determine whether the statutory threshold for unreasonableness has been met; and second, if it has, the Tribunal must consider whether it is just in all the circumstances to make a costs order. Only where the tribunal decides to exercise its discretion to make an award of costs will the question of the amount to be awarded be considered (Haydar v Pennine Acute NHS Trust UKEAT/0141/17).

5. The threshold for unreasonable conduct is high. As set out in appellate authority, costs orders in tribunals are not the norm and should be sparingly used. In *Yerrakalva v Barnsley Metropolitan Borough Council* [2012] IRLR 78 (Court of Appeal), the court emphasised that employment tribunals have a discrete and circumscribed power to award costs and that this discretion must be exercised judiciously, taking into account the conduct of both parties and the effect of any unreasonable conduct.

6. Where a claimant is a litigant-in-person, the Tribunal must make allowances for a lack of legal training and procedural skill. In *AQ Ltd v Holden* UKEAT/0021/12/CEA, the Employment Appeal Tribunal held that it is inappropriate to judge a litigant-in-person by the standards of a qualified representative when assessing whether conduct has crossed the threshold for unreasonableness.

7. Appellate authority also explains that, in assessing unreasonable conduct, the Tribunal should consider the nature, gravity and effect of the conduct, rather than requiring a strict causal link between the conduct and the costs incurred. In *McPherson v BNP Paribas (London Branch) [2004] EWCA Civ 569*, the Court of Appeal explained that costs discretion should reflect the overall impact of the conduct within the context of the proceedings.

8. Where conduct amounts to serious misconduct, such as knowingly making false or fabricated allegations central to a claim, appellate authority supports the conclusion that such conduct can justify a costs order. In *Daleside Nursing Home Ltd v Mathew* [2009] UKEAT/0519/08_1802, the Employment Appeal Tribunal held that where a claim was founded on a deliberate untruth, the conduct was unreasonable and a costs order should have been made.

9. These authorities demonstrate that the costs jurisdiction must be exercised on the evidence of conduct, not on the mere fact of unsuccessful arguments, and that both the raising and defence of issues must be considered when assessing whether it is just to make an order.

REASONING

10. The Claimant was a litigant-in-person throughout the proceedings. The Tribunal therefore applies the established principle that allowance must be made for a lack of legal training and forensic skill. The assessment is not whether the conduct would be unreasonable if carried out by a qualified representative, but whether it was unreasonable for a litigant-in-person. Poor advocacy, misunderstanding of legal tests, or persistence in arguments which the Tribunal ultimately rejects do not, without more, amount to unreasonable conduct. A litigant is entitled to present their case as they see fit, including declining to follow suggestions as to how that case might best be advanced.[1]

11. The Respondent relies in part on the Claimant's behaviour during the hearing. The Tribunal records that:

- The difficulties arising from the Claimant's conduct were considered, addressed and managed by the Tribunal at the time in the exercise of its case management powers under the 2024 Rules, including the issuing of a written warning;

- From the point of issuing the warning onwards, the Claimant accepted our criticism and her conduct largely improved;

- The Respondent made no contemporaneous applications during the hearing alleging unreasonable conduct, nor sought any procedural relief on that basis.

These matters weigh against the contention that the conduct relied upon crossed the high threshold required for a costs order.[2]

12. The Tribunal further notes that Counsel for the Respondent was expressly given the opportunity to raise any applications, including an application for costs at the conclusion of the hearing and declined to do so. While a later application is not barred as a matter of law under the Rules, the failure to raise the issue when the matters relied upon were fresh, and the parties concerned assembled to consider it, is a relevant consideration when assessing whether it is just to entertain or grant the application.[3]

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[1] AQ Ltd v Holden [2012] IRLR 648 (EAT); Daleside Nursing Home Ltd v Mathew [2019] EWCA Civ 145.

[2] Yerrakalva, above; McPherson v BNP Paribas [2004] IRLR 558.

[3] McPherson, above.

13. The Tribunal has also considered the conduct of the Respondent, as it is required to do when considering exercising its powers in the costs jurisdiction. The parties were required to agree a core bundle but failed to do so. A 500-page bundle limit was ordered by Judge Siddall in her Case Management Order of 9 April 2025 ("the April CMO"), which expressly provided that the order was to be complied with but could be varied by application. No application to vary this order was made. Despite that order, the Respondent's representatives produced a substantial supplementary paper bundle running to over 1300 pages. Reference was made by the Respondent's representative to a supplemental bundle in an email dated 30 June 2025, and again in their email of 5 August 2025, but without specifying the scale of the material to be presented or framing this as an application. It was incumbent on the parties to seek a variation in advance if compliance with the order was not possible. Compliance with case management directions of this nature is a routine and expected aspect of professional case preparation.

14. The Tribunal has not been provided with correspondence evidencing what steps, if any, were taken by the parties to agree or limit the bundle contents to the level ordered by Judge Siddall. Responsibility for that process lay with both parties, one of whom was professionally represented. The failure to confine the scope of the material increased the practical burden on the Panel and also on a litigant-in-person navigating a substantial volume of documentation (albeit material with which she was familiar and navigated effectively). This is a relevant contextual factor when assessing the reasonableness of the Claimant's conduct during the hearing.

15. The Tribunal notes in particular that the Respondent's pre-prepared witness statements themselves contained references to documents located within the supplementary bundle, specifically referencing their place in the supplemental bundle, and that those documents were subsequently relied upon in the course of the Respondent's evidence. In these circumstances, it is not persuasive for the Respondent to criticise the Claimant for difficulties created by producing large quantities of material when the Respondent itself had effectively agreed to introduce, rely upon, and embed such material within its own evidential case.

16. The April CMO further required that hearing bundles and witness statements be supplied electronically 14 days prior to the hearing. No electronic versions of the supplementary bundles were produced. This created unwelcome challenges for the Panel. Given the time allocated to the case, the Panel elected to work from the core bundle and to accept references to documents in the paper supplementary bundle. The Tribunal would have been entitled to exclude the supplementary material but considered that doing so might have prejudiced the Claimant, who also referred to material in that supplementary bundle. Finally, the April CMO directed at para 29. that both parties were to contact the tribunal no later than 14 days prior to hearing to confirm that they were ready for the hearing,

or if not ready to explain why. The Claimant complied with this order on 3 November 2025. There is no record on file of the Respondent having complied with this order.

17. In the lead-up to the hearing, and as noted in a letter sent on behalf of Judge Anderson on 10 November 2025, the Claimant submitted repetitive correspondence to the Respondent and to the Tribunal. While regrettable, this is not unusual, particularly where a party is unrepresented. Such applications do not of themselves amount to unreasonable conduct.[4] I have noted that in emails dated 30 June 2025 and 5 August 2025, the Respondent characterised this as "litigation by correspondence" and stated that it would not respond further to the Claimant's correspondence on the points arising for reasons of proportionality unless directed to do so by the Tribunal. That was a procedural choice open to the Respondent, and the Tribunal does not consider that decision to be of itself unreasonable. However, having elected not to undertake further work in response to that correspondence, the Respondent cannot rely on it as a basis for asserting that it incurred additional recoverable costs responding to it. In the event, the Tribunal itself reviewed the material and Judge Andrews requested limited information regarding two alleged missing documents and directed that allegations of fraud be reserved to the hearing, thereby circumscribing the work reasonably required of the Respondent.

18. The Tribunal emphasises that burdens on the ET arising from the conduct of proceedings are matters for the Tribunal itself to manage through its case management powers under the Rules. Parties cannot convert judicial inconvenience or the tribunal's case management burden into a costs advantage. The fact that the Claimant's conduct required judicial intervention does not justify a costs order.[5] It should also be noted that this hearing was listed for a four-day hearing window and, despite the challenges faced within the hearing, it was completed within that time, including the issue of a reasoned decision.

19. The Respondent criticises the Claimant for raising an allegation of fraudulent production of documents. This issue was first raised in correspondence in June 2025, shortly after disclosure, and developed by the Claimant in correspondence. The Tribunal observes that the Respondent prepared to deal with this issue at the outset of the hearing by procuring a witness statement on the issue, and they supplied documents on this point to the Claimant during the hearing. Having considered submissions the Tribunal agreed to consider the issue, hearing live evidence from the Respondent's own witness before making any determination. The fact that the allegation was ultimately not made out does not demonstrate

[4] AQ Ltd v Holden, above.

[5] McPherson, above.

that it was a frivolous, vexatious, or unreasonable issue to raise. Raising a claim or allegation which requires judicial determination and is resolved after hearing evidence cannot, without more, be characterised as unreasonable.

20. The April CMO directed that the claimant supply evidence to support her disability claim by 28 May 2025. In a letter of 30 June 2025 the respondent noted that on the basis of the information disclosed, they did not accept her disability and that there was insufficient evidence to establish mental health impairment but did not go beyond that. The Tribunal observes that despite the deadline imposed by the April CMO order the Respondent did not, at any stage, apply for a deposit order or other procedural safeguard in respect of any contention that elements of the Claimant's case had no reasonable prospect of success. This was despite the prompt provided in the Agenda for Case Management which was completed for the Respondents in advance of the preliminary hearing. While such an application is not a prerequisite for the award of a costs order, its absence is a relevant contextual factor when assessing whether the Claimant's conduct can fairly be characterised as unreasonable.[6]

21. Taken together, the matters outlined demonstrate that both parties materially contributed to the complexity and burden of the proceedings and both failed to comply fully with Tribunal rules. It would therefore be inappropriate to focus solely on the Claimant's conduct, divorced from the Respondent's litigation choices and their effect. The costs jurisdiction requires the Tribunal to consider whether it is just to make an order in the round. A party seeking costs may not seek to benefit from procedural or evidential difficulties of its own making.[7] The Tribunal is not satisfied, for the reasons set out above, that the Claimant's conduct in the litigation, assessed by reference to the standard applicable to a litigant-in-person, amounted to acting vexatiously, abusively, disruptively or otherwise unreasonably such as would pass the statutory threshold for the exercise of the costs jurisdiction.

22. In any event, and even if the statutory threshold were met, the circumstances of this case render it unsuitable for the making of any summary cost order. The Respondent's reliance on supplementary documentation in the face of the April CMO, the scale of the supplementary bundles supplied, the absence of electronic copies, and the need to consider conduct on both sides would, if costs were to be pursued, require fuller examination to ensure fairness. [8] However, the Tribunal is satisfied that the Respondent's application can be refused fairly on the papers

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[6] Daleside, above.

[7] Yerrakalva; McPherson.

[8] McPherson, above.

and that no oral hearing or panel consideration is required in the interests of justice.

23. Taking these matters cumulatively, the Tribunal is not satisfied that the Claimant's behaviour or her actions in the litigation, given all the circumstances, were at the level warranting an order under the Rules. Further, and in any event, the Tribunal would not consider it just to make a costs order in the circumstances of this case for the reasons outlined.

Accordingly, the Respondent's application for a summary costs order is refused.

Approved by:

Employment Judge Harley

11 February 2026