



EMPLOYMENT TRIBUNALS

Claimant: Mr G Parker

Respondent: Liverpool John Moores University (& 9 others)

HELD AT: Liverpool (in chambers) **ON:** 21 October 2025

BEFORE: Employment Judge Johnson

MEMBERS: Ms F Crane
Mr J Murdie

JUDGMENT

(Employment Tribunal Procedure Rules 2024, Part 13)

Upon considering:

- a) The respondent's application dated 20 December 2024 seeking an order for costs against the claimant arising from the Tribunal's reserved judgment and reasons on liability dated 26 November 2024;
- b) Having considered the claimant's representations in reply; and,
- c) Following the respondent's confirmation that their application for costs can be dealt with on a summary basis by the Tribunal,

the judgment of the Tribunal is that:

- (1) The claimant acted unreasonably in the way that he has conducted the proceedings contrary to Rule 74(1)(a) of the Employment Tribunal Procedure Rules 2024.
- (2) In accordance with Rule 76(1)(a), the claimant must pay the respondent the sum of £20,000 in respect of their costs.
- (3) Either party may apply for a stay of the proceedings until claimant's appeal against the judgment on liability brought in the Employment Appeal Tribunal is concluded and if so, this application must be made within 14 days from the date on which this decision on costs is sent to the parties.

REASONS

Introduction

1. This judgment on costs arose from the Tribunal's reserved judgment and reasons made on 26 November 2024 and sent to the parties on 3 December 2024.
2. As the application was made at around the time that the Tribunals' 2013 Rules were replaced by the 2024 Rules, we have indicated where 2013 Rules were referred to by the parties. In relation to this part of the Rules, the recent changes have not materially changed their substance and has instead amounted to a renumbering exercise. More material changes have of course been made elsewhere, but those were not relevant to the matters under consideration in this application.
3. The judgment dealt with the issue of liability in this case and was delivered following a 10 day final hearing held in the Liverpool Employment Tribunal beginning on 2 September 2024 and continuing until 13 September 2024. A further discussion in chambers took place on 30 September, 1 & 2 October 2024.
4. In summary, the decision of the Tribunal was the claimant's complaints of unfair dismissal, breach of contract, detriments arising from protected disclosures, harassment and discrimination relating to race and victimisation were not well founded and were dismissed. The claimant's claim was therefore unsuccessful in its entirety.
5. The respondents' solicitors were instructed to make an application seeking an order for costs against the unsuccessful claimant. This application was made, by email on 20 December 2024 within 28 days of the judgment having been sent to the parties.
6. The application was made knowing that the Christmas 2024 and New Year holiday period was about to commence and so did not include a formal schedule of costs. However, the application was detailed, being 4 pages in length and enclosed copies of letters which the respondent had sent to the claimant regarding the claim on 9 August 2023, followed by 3 further letters sent on 20 November 2023. The third and fourth letters were originally sent on a without prejudice basis, but none of them had previously been made available to the Tribunal before this application was made. They will be discussed in more detail below.
7. The application sought an order for costs that the claimant pay the respondent costs because the claimant had acted unreasonably in bringing these proceedings under Rule 76(1)(a) (2013 Rules), and/or that these claims have no reasonable prospects of success under Rule 76(1)(b). The application had been copied to the claimant. Being an application which had been made

quickly by the respondents' solicitors to comply with Rule 77 (2013 Rules), they were unable to confirm the basis upon which the application was made under Rule 78 (2013 Rules), but at this stage their understanding was that they would be instructed to make an application for a detailed assessment under Rule 78(1)(b)

8. The claimant provided his reply to the respondents' application on 28 December 2024. Not surprisingly, he objected to an order for costs being made. In summary, his reasons for objecting to the application were that he was a litigant in person, that his conduct was '*objectively reasonable*', that he had been unemployed from October 2021 until 2024 and that it was actually the respondent who was at fault when conduct in the proceedings was considered.
9. On 3 February 2025, the respondent sent a further letter to the Tribunal confirming that their instructions were for the application to be dealt with on a '*summary*' basis. The Tribunal understood that this meant the application was therefore being made in accordance with Rule 78(1)(a), (2013 Rules) which enabled this Tribunal to consider the application, but with any award of costs being restricted to an amount '*...not exceeding £20,000*'. For reasons that are not clear, this letter was not forwarded to Judge Johnson upon its receipt by the Tribunal.
10. Unfortunately, Judge Johnson discovered that the letter which he had instructed (on 8 January 2025), to be sent to the parties by the Tribunal with further directions to the parties concerning the respondents' application had not been sent to them. Consequently, (and following enquiries from the respondents' solicitors), he instructed a revised letter to be sent on 22 April 2025, permitting the respondents to have until 2 May 2025 so that they could provide further details of their costs application. The claimant was permitted to have until 31 May 2025 to make any representations in reply.
11. Helpfully, the respondents' solicitors replied by return on 22 April 2025 and enclosed their earlier letter of 3 February 2025 confirming summary assessment being appropriate under Rule 78(1)(a) (2013 Rules) and also enclosing a detailed statement of costs. This provided a total figure including counsel's fees of £175,519.59.
12. The claimant then provided two emails in reply on 22 May 2025 and 23 May 2025 making further representations concerning the respondents' application for costs.
13. The email dated 22 May 2025 in summary raised arguments of unreasonable behaviour on the part of the respondents concerning their dealing with his request for a reference when seeking alternative employment following his dismissal. He also made references to the respondents' conduct within the proceedings during 2024 and during the final hearing in September 2024.
14. The email date 23 May 2025 provided a greater focus upon the respondents' application. The claimant appeared to be asking for transcripts of the 10 day final hearing, despite having been sent the reserved judgment and reasons

and reference was made to an appeal to the Employment Appeal Tribunal (EAT), against the Tribunal's liability judgment in January 2025. He argued that he had not been provided with the means to have a '*reasonable opportunity to make representations*', and made reference to matters that were raised at the beginning of the final hearing about the respondents' conduct within the proceedings. Additionally, he referred to unnecessary costs being incurred by the respondents rotating '*...teams of barristers, solicitors and employees other than witnesses attending the main hearing.*'

15. The claimant also appeared to misunderstand the meaning of Judge Johnson's comments in the Tribunal's letter dated 22 April 2025 and his earlier instructions that a letter be sent in January 2025. He argued that this was inconsistent with the overriding objective misunderstanding that the 'April letter' was sent to ensure that the parties were given additional time to provide everything that they wished to rely upon, before the Tribunal decided how to proceed with the respondents' application. Oddly, despite pursuing an ongoing appeal against the liability judgment in the EAT and which was subject to a Rule 3(10) application listed for a hearing on 15 July 2026, the claimant argued that the delay in hearing the costs application meant that a fair hearing was no longer possible.
16. The Tribunal was content that the application could be heard and listed this case for a chambers discussion in order that the panel could consider the parties' written representations. Because the costs application had been made and was to be determined after a liability trial before a full panel, it was in the interests of justice that the application be considered the same panel. This is consistent with the case of Riley (see below).
17. The Tribunal considered the ongoing EAT appeal and noted that the claimant's Rule 3(10) application seeking permission to proceed with his appeal would not be heard for 9 months. Consequently, it would not be in the interests of justice to delay the consideration of the respondents' application until after that date, being almost two years after the final hearing took place.
18. However, it would be appropriate to allow the parties permission to apply for a 'stay of execution' of any judgment awarding costs, if either or both felt that any payment should be delayed until the outstanding EAT appeal is concluded.

Law

19. The 2024 Tribunal Rules 72 to 76, (previously 2013 Rules 74 to 78), provide the Employment Tribunal with a power to make costs awards. However, such awards are the exception rather than the rule, (see Gee v Shell UK Ltd [2002] EWCA Civ 1479 at [22], [35]; Lodwick v Southwark London Borough Council [2004] EWCA Civ 306, at [23]–[27]; McPherson v BNP Paribas (London Branch), [2004] EWCA Civ 569, at [2]; Barnsley Metropolitan Borough Council v Yerrakalva [2011] EWCA Civ 1255, at [7]).
20. A costs order can only be made in favour of a party that has been legally represented or represented by a non-legal representative who charges for

representation in the proceedings. It is not necessary to consider the alternative 'Preparation Time Orders' section in this case given that the respondents were legally represented throughout the proceedings. Accordingly, that party (referred to in the Rules as the receiving party) can seek payment from the other party (referred to in the Rules as the paying party) of some or all of the actual costs incurred. A costs award of up to £20,000 can be summarily assessed by a Tribunal or it can be the subject of a detailed assessment in the county court or by a specially trained employment judge. On a detailed assessment there is no limit to the amount of costs that can be awarded.

21. When considering whether to make an order for costs, a three-stage process must be adopted in all cases:
- a) Firstly, the Tribunal must make findings of fact about the paying party's conduct. The Tribunal must consider whether, on those findings, one or more of the statutory thresholds in Rule 74 (Rule 76 under the 2013 Rules), are met. For example, a finding that there was breach of a Tribunal order, that the conduct of proceedings was unreasonable in a particular respect, or that the claim had no reasonable prospects of success. The Tribunal will need to explain in its reasons which aspects of any conduct fulfilled which part of the Rule 74 test.
 - b) Secondly, if the Rule 74 threshold has been met the Tribunal will go on to consider whether to exercise its discretion to award costs, (*Ayoola v St Christopher's Fellowship* UKEAT/0508/13 (6 June 2014, unreported), at [17]– [18]; *Robinson v Hall Gregory Recruitment Ltd*, EAT, at [15]). In doing so the Tribunal must take account of all the relevant circumstances including, where appropriate, the paying party's ability to pay any costs order.
 - c) Thirdly, and only when the first two stages have been completed, a tribunal may proceed to consider the amount of the award payable and the form of any award, under Rule 76, (formerly Rule 78 of the 2013 Rules) (see *Haydar v Pennine Acute NHS Trust* UKEAT/0141/17 (12 December 2017, unreported), at [25]).
22. It is not permissible for a Tribunal to proceed from the first stage to the third stage described above without considering the second; that is, it must not assume that, because there are grounds for making an award, a costs order must therefore be made (*Abaya v Leeds Teaching Hospital NHS Trust* UKEAT/0258/16, (1 March 2017, unreported)). Likewise, it is not permissible for the Tribunal to deal with stage two before addressing stage one, that is, deciding to make an award of costs before identifying the statutory ground giving rise to it. It is also wrong, moreover, for the Tribunal to put the burden on the paying party to show why costs should not be awarded, especially before satisfying itself that there had been unreasonable conduct justifying an award under Rule 76 (*Haydar v Pennine Acute NHS Trust* UKEAT/0141/17 (12 December 2017, unreported), at [37]–[38]).

23. Where a case was heard and determined by a full Tribunal, any subsequent application for costs had to be heard and determined by all the members who heard the case and not just by the employment judge alone (Riley v Secretary of State for Justice UKEAT/0438/14). This of course must be balanced against circumstances where it is not practicable for the same judge or panel to hear such an application.
24. In AQ Ltd v Holden [2012] IRLR 648, EAT, the EAT held that the Tribunal had been entitled to take into account the absence of an application by the respondents for a Preliminary Hearing at which they could either have sought to strike out the claim if they considered it to be truly vexatious or unreasonable or have sought a deposit order. Judge Richardson stated that whilst this latter point was not in any sense decisive of the application for costs, it was not irrelevant (at [34]). In Vaughan v London Borough of Lewisham, [2013] IRLR 713, EAT, Underhill J acknowledged that respondents do not always, for understandable practicable reasons, seek a deposit order even where they are faced with weak claims, so that the failure to do so *'is not necessarily a recognition of the arguability of the claim'*, (see 14(1)). The EAT decided that on the facts, the failure to seek a deposit order was not 'a sufficient reason for withholding an order for costs which was otherwise justified (see [19]).
25. Failure to provide a cost warning letter prior to an application for costs may, particularly if the potential paying party is a litigant in person, reduce the likelihood that a tribunal finds the Rule 74 threshold is met or that the discretion, if it arises, should be exercised. An example of this is Rogers v Dorothy Barley School, UKEAT/0013/12 (14 March 2012, unreported), where the EAT refused to award costs against the appellant, who was unrepresented and who refused to accept that his claim was wholly misconceived, on the grounds that the respondent employers had at no stage given him a warning that they would seek costs nor given him any notice of the amount of such costs, with the result that he had no opportunity to consider his position.
26. But, whilst it is good practice to warn a claimant of the weakness of their case, the failure to do so will not, as a matter of law, render it unjust to make a costs order even against an unrepresented claimant (see Vaughan, at [17]–[19]). In Vaughan the EAT upheld a substantial order for costs against the claimant notwithstanding the absence of a costs warning letter, and in doing so had regard to the likely effect such a letter would have had. Underhill J pointed out that the claimant had never suggested that she would have discontinued her claim if she had received such a letter, and, even if she had, such an assertion would not have been credible. The claimant was *'convinced, albeit without any rational or evidential basis, that she was the victim of a conspiracy and of a serious injustice, and it seems to us highly unlikely that a letter from the respondents, however well-crafted, would have caused the scales to fall from her eyes'* (at [19]).
27. Whether a cost warning letter will result in an order for costs being made will depend on the facts. But where a well-argued warning letter is sent, a failure by the claimant to engage properly with the points raised in it can amount to

unreasonable conduct if the case proceeds to a hearing and the respondents are successful for substantially the reasons that were contained in the letter. In *Peat v Birmingham City Council* UKEAT/0503/11 (10 April 2012, unreported). This case involved ten claimants who were legally represented and supported by their unions. The costs warning letter, which was sent a month before the hearing, pointed out that the claims were destined to fail supported with reasons why. When the claims were dismissed following the hearing, the Tribunal awarded costs against the claimants. The orders were approved by the EAT on the grounds that the claimants' solicitors acted unreasonably in failing to address their minds to the concerns raised within the warning letter and that if they had done so, they would have likely appreciated that the prospect of success '*was so thin, that it was not worth going on with the hearing*' (at [28], per Supperstone J). This failure was held to be unreasonable conduct under what is now Rule 74(2)(a) of the 2024 Rules, (which meant that it was unnecessary for the respondents to go on to satisfy the tribunal that the arguments based on individual consultation had no reasonable prospect of success (see [29])).

Discussion

28. As described above, this consideration of the respondents' application for an order that costs be awarded against the claimant and the claimant's reply took place in chambers before the same Tribunal panel who heard the final hearing and reached a decision concerning liability.

Findings of fact

29. We first of all considered the findings of fact that should be made regarding the claimant's conduct in accordance with Rule 74(1)(a), (Rule 76(1)(a) 2013 Rules) and the first of two grounds raised by the respondents in their application dated 20 December 2024. We would also consider the second ground raised under Rule 74(1)(b) relating to the claim having no reasonable prospects of success, (Rule 76(1)(b) 2013 Rules). However, if the respondent satisfied ground one, it would not be necessary for them to succeed with ground two.
30. The Tribunal acknowledged that the claimant was dismissed on 14 October 2021 and following a period of early conciliation from 12 January to 22 February 2022, he presented a claim form to the Tribunal on 18 March 2022, (initially against the first respondent only). The claimant was unrepresented and identified in section 8.1 of the claim form the complaints of breach of contract, unfair dismissal, detriments relating to a protected disclosure and race discrimination. These were complaints that the Tribunal had jurisdiction to accept, and we did not criticise the claimant for bringing these proceedings (initially at least), nor his conduct at this time.
31. This was a case that was subject to considerable case management, and it took more than 2 years before the final hearing on liability could take place over 10 days in September 2022. However, it did afford the claimant the opportunity to engage in discussions with the respondents' solicitors and Tribunal Judges. While the Tribunal Judges would be unable to advise the

claimant, there were opportunities to raise concerns about the extent of his case and any issues that arose regarding the conduct of the parties.

32. On 9 November 2022 an initial preliminary hearing case management took place before Employment Judge (EJ) Horne (as he then was) and in addition to initial discussions regarding the list of issues and case management orders, the case was listed for a judicial mediation which eventually took place on 12 May 2023 before EJ Buzzard. The claimant was permitted to add the nine individual respondents (second to tenth respondents), and the respondents were permitted to amend the grounds of resistance. This was presented on 26 January 2023, and it was a detailed grounds of resistance involving 91 paragraphs, replying to each allegation in the list of issues over 24 pages and making clear references to time limit issues.
33. The Tribunal acknowledged that given the nature of judicial mediation, EJ Buzzard would not have provided his notes of the discussions regarding the possible settlement of the case at that 'hearing' and would not have produced a formal Note of Hearing either. The essential element of judicial mediation is that the allocated Judge sits as a mediator and informally discusses with the parties of quantification of the claim, risks facing both parties and attempts to facilitate circumstances where a settlement can be agreed using an ACAS COT3 and without any formal admissions or concessions on liability. A recognised feature of a judicial mediation is that parties will often be given what can be described as a 'reality check' regarding the prospects of the claim and response and a realistic figure for settlement of the claim, (although settlement need not necessarily be restricted to or include financial remedy).
34. Any reference to what was discussed during the mediation regarding liability and remedy would of course remain privileged and would not normally be referred to during the liability and (if relevant), the remedy hearings. This should be distinguished from any case management matters that might be discussed at the conclusion of a mediation where it has proven to be unsuccessful, and the mediation has effectively been converted to a case management hearing for that purpose. For the avoidance of doubt, the Judge acting as mediator in the judicial mediation must recuse themselves from any further involvement in these proceedings.
35. We are of course now at the stage of the proceedings where the liability hearing has taken place and as the claimant was unsuccessful, no remedy hearing will be required. It is therefore reasonable that the respondent make reference to the judicial mediation when questioning the claimant's conduct as part of the costs application. While the claimant disputes what the respondents' solicitors have said about his conduct in his case, he has not provided an alternative description of any discussions that took place with EJ Buzzard regarding quantification of loss. It is understood that claimant valued his claim during 2023 at figures between £1.9 million and £3 million. This is a position that he maintained throughout the proceedings with £3 million being used to value his claim at the mediation. It will undoubtedly made the possibility of a without prejudice settlement through ACAS extremely unlikely.

36. While we had concerns regarding the claimant's quantification of his claim and the reasonableness of this position, he remained unrepresented, and liability remained in dispute with significant case management to take place relating to disclosure of documentary and witness evidence. However, the next preliminary hearing case management before EJ Ainscough on 28 June 2022 resulted in the case being listed for final hearing, the issues being confirmed and case management orders for disclosure of documents, bundles and witness evidence being made. A judicial assessment was also listed for 24 October 2024. It was understood that at this preliminary hearing case management, a discussion also took place regarding the first respondent not relying upon the statutory defence under sections 109(4) of the Equality Act 2010 and section 47B Employment Rights Act 1996 and whether the claimant still needed to continue with his claim against the second to tenth respondents. While it is understood that the claimant disputes this discussion having taken place, we could see that paragraph (15) of EJ Ainscough's Note of Preliminary Hearing referred to this matter. Importantly, it stated that the claimant *'...was informed of the possible consequences of including all of the individual respondents in such circumstances with regard to a costs application. Despite this, the claimant was of the view that he wanted to retain all the individual respondents in this claim.'*
37. Shortly afterwards on 9 August 2023, the respondents sent the claimant a two page letter referring to the discussions at the preliminary hearing case management before EJ Ainscough and reminded the claimant that the first respondent was not seeking to rely upon the relevant statutory defences which would necessitate the second to tenth respondents remaining as parties to the proceedings. It noted that the claimant refused to accept the conversation with EJ Ainscough took place disregarding paragraph (15) of her Note and that this could amount to unreasonable behaviour on his part.
38. Importantly, the letter referred to the respondents' solicitor's letter of 1 August 2023 inviting him to withdraw the claim against the individual respondents in light of the respondents' position regarding the statutory defence and it noted that the claimant refused denying a discussion took place as described in paragraph (15) at the previous hearing. He was reminded of the application of Rule 76(1)(a) (2013 Rules) and that his behaviour was unreasonable in accordance with that provision and the respondents may ultimately seek an order for costs unnecessarily incurred by having the individual respondents remain as parties to the proceedings. He was urged to seek independent legal advice. The respondents' solicitors warned the claimant that a refusal to withdraw against the individual respondents, could result in their making an application for the removal because of the claimant's vexatious and unreasonable behaviour, (presumably strike out under Rule 37(1)(a) of the 2013 Rules, (now Rule 38)).
39. The claimant refused to take this action and the case progressed to the judicial assessment on 24 October 2023 before EJ Batten. The Tribunal considered that broadly the same principles applied to this 'hearing' as was the case with the judicial mediation. The difference was that Judge Batten in assessing the case would be reviewing the overall merits on liability issues of the claimant's claim and the respondents' response. Again, no notes were

available from EJ Batten given the nature of this 'hearing', but it is clear from the 3 letters sent by the respondents' solicitors on 20 November 2023, that the claimant was provided with a further 'reality check' concerning his prospects in this case and significantly regarding issues of liability. The Tribunal noted that in his various replies to the respondents' application, the claimant has not sought to dispute what they referred to in these letters or to offer an alternative note or recollection of what EJ Batten told him at the judicial assessment.

40. As explained in the introduction above, the 3 letters were disclosed by the respondents when they made their application for costs on 20 December 2024. They were disclosed after the Tribunal delivered its reserved judgment and reasons on liability which dismissed the claim in its entirety.
41. The first of these three letters was headed '*without prejudice save as to costs*' and was just over 2 pages in length. It reminded the claimant that they believed he continued to behave unreasonably and vexatiously by refusing to withdraw his claim against the individual respondents when no statutory defence was asserted by the first respondent. He was reminded of EJ Ainscough's comments and the earlier letter sent on 9 August 2023.
42. The letter then proceeded to refer to the judicial assessment and EJ Batten's comments regarding the role of the individual respondents in this case. Sensibly and reasonably, they only referred to those respondents where EJ Batten expressly questioned the merits in continuing to proceed against them. These were the third, sixth, eighth, ninth and tenth respondents. However, the claimant was also referred to EJ Batten's comments that the claimant was more generally at risk of an order for costs for unreasonable behaviour if he was considered to have unnecessarily continued with his claim against the individual respondents. The claimant was once again reminded of the provisions of Rule 76(1)(a) (2013 Rules) and that he would be wise to seek independent legal advice. He was warned that if he did not reply positively by 4 December 2023, they would make their application seeking removal of the individual respondents and reserved their position regarding costs.
43. The second letter was also headed '*without prejudice save as to costs*' and was just over 2 pages in length. It focused upon EJ Batten's comments made at the judicial assessment and her views regarding the merits of each complaint brought by the claimant. The Tribunal noted that the claimant had not sought to challenge the contents of this letter when he responded to the respondents' application for costs. The respondents' letter provided quotes of EJ Batten's comments in relation to each complaint.
44. In relation to the unfair dismissal, she was of the opinion that the claimant was unlikely to succeed and that the claimant's alleged behaviour was likely to justify dismissal on some other substantial grounds. She was described as being unable to understand the claimant's breach of contract complaint given that he had received his notice pay. In relation to the whistleblowing complaint, EJ Batten observed that the claimant's alleged disclosures were unlikely to be protected under section 43B Employment Rights Act 1996 and even if one or more were so protected, it was doubtful that causation of the

asserted detriments could be established. This included the allegation of automatic unfair dismissal under section 103A.

45. In terms of the Equality Act 2010 complaints, EJ Batten's comments referred to by the respondents in this letter was also pessimistic. Harassment was under section 26 was seen to involve out of time allegations with the latest being from 2020 and the alleged unwanted conduct involved *'throwaway comments'* which were unlikely to succeed. It was noted that references to the claimant being Canadian were *'...constructed after the event to try and suggest there is a race link.'* Direct discrimination under section 13, was also mentioned and while the respondents referred to EJ Batten acknowledging that while a few allegations might be discriminatory, the claimant would struggle to show that there was difference of treatment. She also was recorded as informing the claimant that the quantification of his claim would be nowhere near £2.5m and that in terms of injury to feelings, the claimant would at best receive an award within the lower Vento band. It should be noted that despite EJ Buzzard's judicial mediation in May 2023, when the claimant updated his schedule of loss, he failed to recalibrate his claim valuation to a more proportionate and reasonable figure. Finally, in relation to indirect discrimination under section 19 and victimisation under section 27, EJ Batten was recorded as *'having no merit whatsoever'*. In relation to indirect discrimination complaint, the respondents recorded her comments as being *'I am going to be really blunt, I think the indirect discrimination claim is hopeless'*. It was noted that the claimant was warned that if the claimant did not produce evidence at the final hearing to support these complaints, he would be at risk of an order for costs.
46. This letter also referred to unreasonable behaviour by the claimant and warned him of Rules 76(1)(a) and (b) (2013 Rules), with regards to costs. The respondents' solicitor estimated costs at £50,000 at the date of this letter and predicted a further £70,000 would be incurred in proceeding to a final hearing with the numerous claims and respondents that remained in place. The claimant was reminded that he should seek independent legal advice regarding the risk that he faced in relation to costs and offered a 'drop hands' settlement where the claimant would discontinue his claim without the respondents seeking costs providing, he did so by 4 December 2023.
47. Finally, the third letter sent on 20 November 2023 was also sent as a *'without prejudice save as to cost'* letter and was 2 pages in length. This letter referred to case management and noted that the respondents had complied with EJ Ainscough's order that disclosure take place by 16 October 2023. They had been unable to access the claimant's disclosure in an email sent before the judicial assessment but expressed concern that it appeared to consist of more than 40,000 documents. They recalled that EJ Batten had also been dismayed by the claimant's position on disclosure and had suggested that a reduction in the complaints being brought so that the focus was upon the dismissal would make the claim more manageable for the claimant. The respondent referred to further correspondence sent after the judicial assessment, but that the claimant simply re-uploaded the 40,000 documents previously relied upon. They informed the claimant that this was unreasonable behaviour and contrary to overriding objective. Reference was

again made to Rule 76(1) (2013 Rules), that the claimant should seek independent legal advice and that a costs application may be made. They requested a filtered list of documents by 4 December 2023.

48. The claimant failed to heed these letters and the proceedings continued with all of the complaints in place, all ten respondents remaining as parties and with a failure to adopt a more proportionate approach to the question of disclosure. This was all the more surprising given that during the second half of 2023, the claimant had been cautioned at judicial mediation on remedy, preliminary hearing case management on the individual respondents and judicial assessment which considered merits on liability. This was amplified by 4 separate detailed letters warning the claimant of his approach to the proceedings, that he was at risk of an order for costs and that he should seek independent legal advice.
49. At this point, even an unrepresented party would be expected to have sufficient insight that their claim might be disproportionate. Had they been reasonable, they could have considered reviewing their best complaints. They could have proceeded with only those best claims, restricted the claim to the first respondent only and adopting a more proportionate and focused approach to disclosure. At this point, by adopting such an approach, the claimant could have demonstrated reasonable behaviour without risking an application for costs. Given that he was a professional and indeed educated man, it is surprising that he failed to display insight of this nature when reflecting upon the numerous reasonable warnings given between May and November 2023. Had the claimant heeded these concerns, even if he had decided to continue with an abridged claim, he would have been better able to prepare his case for the final hearing which in all likelihood could have had its hearing length reduced to 5 days or even less.
50. The Tribunal acknowledged that it may have taken some time for a reasonable unrepresented party to fully appreciate and digest the developing situation regarding his claim from May 2023. However, by December 2024, they should have been under no illusions that the claim was unfocused, required a disproportionate number of respondents and involved many weak complaints and unreasonable expectation in terms of remedy. Unfortunately, despite having been provided with the necessary insight and having the capacity and ability to adjust his approach, the Tribunal concluded that the claimant adopted an intransigent approach which resulted in the claim remaining unnecessarily expansive which affected preparations for the final hearing.
51. Ultimately, further case management was required at a preliminary hearing case management before EJ Johnson on 21 May 2024 where the timetable for case management orders was reset to ensure that the final hearing could take place as listed. Even then, the claimant failed to provide a witness statement which fully addressed the issues under consideration at the 10 day final hearing. This added to time take for his evidence to be heard as counsel for the respondents required a longer period of cross examination which contributed to the judgment being reserved due to insufficient time being available.

52. Instead, he became focused upon making applications against the respondent including a strike out application at the final hearing which delayed the hearing of evidence until day 3. Additionally, the individual respondents remained as parties and with all complaints remaining in place, significant additional time was required for each of them to give their evidence and this added to the final submissions that were required and the time for deliberation by the panel.
53. The Tribunal observed that while EJ Batten did not have the benefit of the parties' witness evidence at the judicial assessment, the conclusions and concerns described and quoted within the respondents' second letter sent on 20 November 2023 were reflected in the decision this panel reached on liability. The Tribunal's decision was one where the claim was wholly unsuccessful and where the reasons described numerous weak complaints included disclosures which were not considered protected by section 43B Employment Rights Act 1996.
54. Having considered the claimant's conduct in these proceedings, the Tribunal concluded that his failure to address the concerns raised from May 2023 became inexcusable, especially as they were repeated and concluding with the 3 letters sent on 20 November 2023. The claimant's failure to recalibrate the number of parties, the number of complaints and the disproportionate disclosure by the deadline set by the respondents of 4 December 2023, represented a clear act of unreasonable behaviour under Rule 76(1)(a) (2013 Rules). This unreasonable behaviour continued up to and including the final hearing and as described in the reserved judgment and reasons, the claimant became distracted from preparing his case for final hearing and instead attacking the respondent. EJ Johnson who was involved with both the final hearing with the panel and the preliminary hearing case management in May 2024, noted that the respondents' solicitors were behaving appropriately and proportionately and were simply trying to prepare the case so that it would be ready for the final hearing.
55. This part of the respondents' application is therefore made out and consequently, it is not necessary to consider the second part under Rule 76(1)(b) (2013 Rules), namely that the claim had no reasonable prospects of success.
56. However, for completeness the Tribunal did consider this argument but noted that the test of no reasonable prospect of success for the claim in its entirety involved a very high bar. Even allowing for the frankness of Judge Batten afforded by the judicial assessment, we noted that she did not have the witness evidence available and was basing her decision upon the claim form, Tribunal notes of hearing and the (admittedly detailed) amended grounds of resistance.
57. Accordingly, while we felt it was fair to describe the complaints as weak, we could not say definitively that the claim as a whole had no reasonable prospects of success. There were no deposit orders made within these proceedings and therefore the question of costs being applicable under Rule

40 (2024 Rules) is not under consideration in respect of unsuccessful complaints considered to have little prospect of success.

58. Nonetheless, we did come close to reaching a conclusion that following events in late 2023, the claimant was informed that he needed to review his claim and even if he continued to pursue it, to do so reasonably would be for it to continue in a much reduced form. His failure to address this significant and clearly communicated problem amounted to unreasonable behaviour.

Should costs be awarded?

59. Therefore, because the panel concluded that the threshold under Rule 74(1)(a) was met, it is appropriate to proceed to the second stage, namely should we exercise our discretion to award costs. This requires the Tribunal to consider all relevant circumstances.
60. Firstly, we were acutely aware that the claimant was a litigant in person throughout these proceedings and therefore did not have the benefit of legal advice concerning employment law and Employment Tribunals Rules of Procedure. However, it must also be considered that the claimant is a professional man, highly educated and intelligent with the ability to listen and learn from discussions with the respondents' solicitor and the various Tribunal Judges whom he encountered. This was especially the case with regard to EJ Buzzard at the judicial mediation and EJ Batten at the judicial assessment. He was made aware of litigation risks, problems with his claims and unreasonable expectations concerning remedy. He was informed during May 2023 to November 2023 of the application of costs, the need to behave reasonably when bringing a claim and the duty that applied under the overriding objective.
61. The claimant was afforded significant latitude during this period to revise his claim, even if he was unwilling to withdraw it entirely following the respondents' letters sent on 20 November 2023.
62. While the claimant did mention that he was out of work from 2021 until 2024, he did not provide details of his means or lack of during his various replies to the respondents' application and supplementary correspondence. The Tribunal understood that he had obtained full time employment during 2024, was in work at the time of the final hearing and as far as we are aware, he continues to remain employed. This is not a case where the claimant has demonstrated that he is without means.
63. While the claimant addressed the Tribunal upon issues that he had regarding the provision of references post dismissal, this would only have been relevant to questions of mitigation of loss when calculating remedy, which of course is not applicable in this case. The issues raised may be something that the claimant wishes to challenge as a civil claim against the first respondent if he feels that there has been defamation or negligent misstatement etc', but this is not a relevant consideration for this application. Given that the termination of employment related to unreasonable behaviour on the part of the claimant, it may well be the case that the first respondent is under a duty to be candid

regarding the claimant's conduct when asked to provide references. But this is not something that need trouble the Tribunal in this case.

64. While various allegations were made against the respondents by the claimant in terms of their conduct, this simply appeared to be an extension of the ongoing issues that he raised before the final hearing began and which were described in paragraphs (7) to (15) of the reserved judgment and reasons. Paragraph (15) concluded by stating that the respondents had behaved in a way consistent with the overriding objective in terms of their conduct within the proceedings.

65. Consequently, the Tribunal concludes that an order for costs should be made against the claimant having considered all relevant circumstances in this case.

Quantification of the costs award

66. This leaves us with the third and final part of the application process, which is quantifying the level of costs that should be imposed upon the claimant.

67. The respondents have provided a statement of costs which uses a format required under the Civil Procedure Rules and goes into significant detail. It includes descriptions of the fee earners involved throughout the proceedings and the variations in their hourly rates for the years of their involvement in this case. The Tribunal had no concerns regarding the number and qualification of the fee earners involved or the hourly rates that were applied. It was noted that they appeared to reflect local Law Society rates and the actual commercial rates charged to clients may well have been higher than the figures within the statement of costs.

68. As this is a summary consideration of costs, it is not necessary for this Tribunal to become involved in a detailed consideration of the attendances, the role of each fee earner or the time involved in each task. Suffice to say, this claim involves proceedings which began in 2022, and which reached a final hearing in September 2024. The claim involves an expansive list of issues over a range of complaints involving 10 respondents. This was not a simple or concise claim.

69. It was also entirely appropriate for counsel to be instructed in this case as it was one where skilled advocacy would be appropriate and, in many respects, would be more cost effective and proportionate than the solicitors assuming the role of advocates charging hourly rates. As already mentioned, this is a case where a 10 day final hearing was required and involved many preliminary hearings.

70. Ultimately, it might be the case that at a detailed assessment, the total figure within the statement of costs may have resulted in the costs Judge dealing with this matter to make reductions to the total figure claimed of £175,519.59. This chambers discussion was not however, a detailed assessment.

71. Considering the Tribunal's findings above, we concerned ourselves with the costs that we considered to be avoidable had the claimant behaved in a reasonable way from December 2023. This of course, still leaves the period from then until the final hearing in September 2024. The respondent's letters sent on 20 November 2023, refer to costs at that date being £50,000 approximately with at least £70,000 being envisaged between that date and the conclusion of the final hearing.
72. It was of course more than £100,000 that was incurred during the remaining 10 months or so before the final hearing concluded.
73. The Tribunal acknowledged that had the claimant behaved in a more reasonable and proportionate way, there may still have been a final hearing with fewer or no individual respondents and a reduced list of issues. It would likely have remained a multi day hearing, but with only 5 days, rather than the 10 days that actually took place.
74. However, the claimant's failure to address the concerns quite reasonably raised by the respondent in August 2023 and November 2023 placed them in a position where a significant amount of additional work was required. Additionally, the claimant's unnecessary strike out application at the beginning of the final hearing which wasted two days before evidence could be heard as well as his failure to produce a complete witness statement that covered the many issues, placed an additional and unreasonable burden on the respondent's representatives.
75. Accordingly, we concluded that the costs unnecessarily incurred by the respondent from late 2023 until the conclusion of the final hearing were well more than the £20,000 maximum award that we are permitted to order in accordance with Rule 76(1)(a) (2024 Rules). Therefore, considering all of the circumstances in this case, it would be entirely reasonable and appropriate to award the respondent £20,000 in respect of their successful application for costs.

Conclusion

76. Accordingly, the decision of this Tribunal is as follows:
- a) The respondent's application dated 20 December 2024 seeking an order for costs against the claimant arising from the Tribunal's reserved judgment and reasons on liability dated 26 November 2024;
 - b) Having considered the claimant's representations in reply; and,
 - c) Following the respondent's confirmation that their application for costs can be dealt with on a summary basis by the Tribunal,

The judgment of the Tribunal is that:

- a) The claimant acted unreasonably in the way that he has conducted the proceedings contrary to Rule 74(1)(a) of the Employment Tribunal Procedure Rules 2024.
- b) In accordance with Rule 76(1)(a), the claimant must pay the respondent the sum of £20,000 in respect of their costs.
- c) Either party may apply for a stay of the proceedings until claimant's appeal against the judgment on liability brought in the Employment Appeal Tribunal is concluded and if so, this application must be made within 14 days from the date on which this decision on costs is sent to the parties.

Employment Judge Johnson

Date 27 October 2025

JUDGMENT SENT TO THE PARTIES ON

8 December 2025

FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

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

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>