



EMPLOYMENT TRIBUNALS

Claimant: C Wilson
First Respondent: Northants Accounting Ltd
Second Respondent Nishi Patel

Heard at: Cambridge – by CVP
On: 10 June 2024, 30 May 2025 (in chambers),
and 27 February 2026, (in chambers).

Before: Employment Judge L Brown

Members: Ms Limerick
Mr Grant

Appearances

For the Claimant: Did not attend, and not represented
For the Respondent: Ms Younas, Solicitor

COSTS JUDGMENT

1. The Claimant is ordered to pay costs in the sum of £250.00.

Procedural History

2. This case was listed for a final hearing but for reasons set out in a Judgment of 10 June 2024 the Claim was dismissed under Rule 47 of the Employment Tribunal Rules of Procedure 2013.
3. The First Respondent renewed their application for an order on the 10 June 2024 in their favour that the Claimant pay their total costs in this claim in the sum of £7,223.00.

4. I pointed out that pursuant to Rule 77 of the Employment Tribunal Rules of Procedure 2013 that a party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties. However, I pointed out that no such order may be made unless the paying party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order) in response to the application. I said that the costs sought at the hearing on the 27 November 2023 had now increased, and so the Claimant should be given an opportunity to make representations prior to any decision by this Tribunal on costs.
5. Ms Younas submitted that had the Claimant attended today she could have responded to the application.
6. In relation to the duty of this Tribunal to take into account the means of the Claimant, in accordance with Presidential Guidance, I pointed out that we had no such information. Ms Younas said we could simply assume her income in her new role was the same as that in her old role with Citation PLC and with the Respondents which was in the region of £24,000.00.
7. However, this Tribunal was of the view up to date information about the Claimants means was required before any decision on costs could be reached. I therefore made orders about the issue of costs and how they would be determined and we determined it would not be in accordance with Rule 77 to proceed to determine the costs application today.
8. Following that hearing orders were made as follows:

Costs

1. *The Respondent by the **1 July 2024** must set out the full basis for its costs application against the Claimant and must send this to the Tribunal and copy in the Claimant.*
2. *The Claimant should by **15 July 2024** make representations in writing, or request a hearing, at which she may make representations about her means and any grounds upon which she contests the application for costs in response to the application against her.*

9. I also directed that the Tribunal state in the covering letter the following:

The Respondent is ordered to confirm that in relation to the application for costs against the Claimant that the sum sought to be ordered to be paid by the Claimant to the Respondent is a sum that the Respondent has personally incurred and will have to pay to its legal representatives Peninsula.

Judge Brown draws the Respondents attention to the following part of Rule 74: -

74.— (1) “Costs” means fees, charges, disbursements or expenses incurred by or on behalf of the receiving party

10. In response the Respondent sent an email dated the 12 August 2024 stating as follows:

Dear Sirs,

The Respondent reiterates its costs application pursuant to Rule 76, in respect of the postponed Final Hearing, listed for 27 and 28 November 2023.

The Claimant's has acted vexatiously, abusively, disruptively, or otherwise unreasonably in the way that the proceedings (or part) have been conducted, Rule 76. The Claimant hasn't actively pursued the Claim, failed to comply with the Case Management Orders and failed to attend the Final Hearing which resulted in wasted costs. The Respondent refers to their previous application for the basis of the Costs application.

Since then, the Claimant continued to not comply with the Case Management Order for disclosure. The final hearing had been postponed once and then the Claimant failed to attend the re-listed Final Hearing. The Claimant was provided with an opportunity to drop hands via ACAS but failed to respond. This could have avoided the preparation and the final hearing from proceeding. The claim in itself was brought vexatiously itself as the Claimant was aware she had been working for Citation. The documents produced by Citation have been included in the final hearing bundle.

The Respondent respectfully seeks a costs order that the Claimant makes a payment in respect of:

The Respondent's representative time allocated for the full preparation and including the attendance at the Final Hearing and costs incurred to date. A Schedule of Costs was provided previously to the Tribunal and is

updated (attached), and the Costs application was reiterated at the hearing.

To date, the Costs paid on behalf of the Respondent in defending this matter are as follows:

- 1. Costs paid to HR to defend the allegations made against the Claimant/Representatives in the sum of £2,970.*
- 2. The Respondent was not an existing client of Peninsula prior to the Tribunal hearing and therefore was not on a retainer. The reason the Respondent had signed with Peninsula was because of this hearing and representation. The Respondent had to sign up to a retainer, but this absorbed a sum for the representation in the sum of £2,000.*

If the Tribunal is not minded to award costs on an hourly basis of £233, then the Respondent submits costs can be considered in the alternative on a preparation time order instead (updated schedule attached). A party is entitled to advance on both grounds as per the case of:

Duhoe v Support Services Group Ltd UKEAT/0102/15 -

[https://assets.publishing.service.gov.uk/media/58ed0b03e5274a06b3000160/Mrs G Duhoe v Support Services Group Ltd In Liquidation UKEAT 0102 15 MC.pdf](https://assets.publishing.service.gov.uk/media/58ed0b03e5274a06b3000160/Mrs_G_Duhoe_v_Support_Services_Group_Ltd_In_Liquidation_UKEAT_0102_15_MC.pdf)

It is submitted the Tribunal applies its discretion to award costs.

11. In support of the application was enclosed two invoices from an organisation named as 'Stress Free HR' and the sum set out was the sums of £1620.00 and for £1350.00.
12. In addition, a costs schedule was attached setting out fees claimed for the work done by a legal executive and for Ms Younis, who we note is a practicing solicitor working, both of whom worked for Peninsula the Respondents representative in these proceedings in the sum of £5,938.50 based on an hourly rate for Ms Younis of £233.00 per hour and for the legal executive of £41.00 per hour. There was an

alternative claim for costs for both of their time incurred at a rate of that of a lay representative in the sum of £41.00 per hour of £2,378.00.

13. On the same day the 12 August 2024 the Claimant responded as follows:

Hi

Before acting on this email Smaira has wrote asking for a cost order, please contact me directly.

I haven't been able to attend the hearings as I've been extremely unwell. I'm undergoing radioactive therapy treatment my last treatment was due 2nd August 2024 and now awaiting another date for more treatment in the next 8 weeks.

My only aim in life has been to get well and concentrate on a better quality of life for myself.

Smaira - as for the first sentence you wrote how I've acted vexatiously, abusively, and disruptively, please outline and explain dates and times in more detail and please feel free to list in more detail when I acted like this? As I haven't spoken to anyone about this case for years as I've been very unwell.

I have never met anyone at this court. I have never spoken to Smaira about anything.

Please can someone from the court call me

I can email proof of hospital letters and my medical summary through as proof of just how unwell I currently am.

As for this case, if you want to put a cost order on me. I will appeal any decision asking me for money right now. I'll be going onto SSP and can hardly pay my own bills right now.

If anyone needs anything else from me, please call.

14. I directed the Tribunal write to the Claimant and a letter was sent to her on the 31 October 2024 saying as follows:

Employment Judge L Brown has directed that I write to the Claimant as follows:

"Does the Claimant wish to contest this costs application at a hearing which Judge Brown directs should take place by Cloud Video Platform for three hours hearing in front of the full tribunal who dismissed her claim or is she agreeable to the application being dealt with on papers?"

If she wishes to defend the application by making representation at a cots hearing the Claimant is to reply by the 6 November 2024, making clear she wishes it to be dealt with at a hearing which the Claimant will be required to attend, or she is to state that she is willing for this matter to be dealt with on paper."

15. I was advised by the administration team that as at the 14 November 2024 there had been no response from the Claimant.
16. On the 17 November 2024 I instructed the Tribunal to write to the Claimant in the following terms, and the letter was sent to her on the 27 November 2024 as follows:

Upon the directions of Employment Judge Brown:-

The Claimant is by the 18 December 2024 to provide a statement of her current savings and net disposable income each month so that this can be considered in relation to the application for costs against her by the Tribunal who dismissed her claim.

As there has been no request by the Claimant for a hearing then this matter will be considered by the Tribunal in chambers without the parties attending.

17. No reply was received from the Claimant giving information about her means.
18. The matter was then listed for the costs application to be dealt with in chambers. There was some delay in finding a date that the Tribunal could sit together and it was listed for the 30 May 2025. We determined that more information was required from the Respondent about how they put their costs application. It was not clear how they could claim for costs for both themselves as represented by Peninsula, and also for costs incurred by another organisation Stress Free HR at the same time. The hearing was therefore adjourned with directions issued by me and the following letter was sent to the Respondent and copied to the Claimant on the 5 June 2025: -

Dear Claimant and Respondents,

Employment Judge Brown has directed me to write as follows:

"The Tribunal met in chambers to consider the application for costs against the Claimant.

The application could not be determined without the Tribunal being provided with further information from the Respondent and the Respondent is ordered by 3 July 2025 to supply the following information: -

1. In its costs application the Respondent supplied invoices from 'Stress Free HR'.

It is not clear to the Tribunal how this part of the application for costs is pursued. Is this organisation part of the Respondents representative's organisation or is it separate? If it is separate to Peninsula, then on what basis do they say that that organisations costs can be recovered if they never acted for the Respondent in these proceedings?

2. The Respondent asserts that it entered into a retainer with Peninsula in order to assist them in defending this claim and they assert that £2000 of the retainer related to representation in this claim. The Respondent is to state the total annual

retainer paid to Peninsula and how the £2000.00 figure is arrived at for representation in the Tribunal as part of the overall retainer.

3. It is not clear to this Tribunal how the Respondent is claiming costs on an hourly rate when they appear to exceed the sum of £2000.00 said to relate to the retainer fee charged. If the Respondent claims the sum of £2000.00 for Peninsula representing them, they cannot also or in the alternative claim the costs set out in the costs schedule if they assert the amount they have paid to their representative for the element relating to representation was the sum of £2000.00. The Respondent is to state whether it is claiming the sum of £2000.00 or the amount in the Schedule and if they are claiming the amount in the Schedule on what basis is it claimed if it exceeds the £2000 it is asserted they paid for representation as part of the retainer?

4. The Respondent is also to confirm if Peninsula claims the rate for a solicitor and legal executive or whether it claims for that of a lay representative. It can only claim for a solicitors rates if that solicitor was a practising solicitor. If they were not practising when representing them then it can only be claimed at the rate of a lay representative. The Respondent is to say on which basis it claims the costs set out in the schedule in the alternative to the £2000.00 referred to i.e. as a practising solicitor representing them from Peninsula or on the basis of a lay representative representing them, and if it claims on the basis of the schedule it must confirm whether or not it paid that amount to the Peninsula over and above the retainer of which £2000 is said also to be the amount they paid for representation.

5. The Respondent must lodge by 3 July 2025 a bundle containing all documents upon which it relies in support of the application, including a copy of all costs applications to date, and to include any original evidence upon which they rely for the costs application, and to include all relevant court orders and pleadings.

The Claimant is also ordered to provide the following information by 3 July 2025:-

6. The Claimant is to provide all evidence including medical evidence of her ill-health at the time of the final hearing.

7. The Claimant is given a further opportunity to provide evidence of any savings and disposable income after payment of bills each month so that this Tribunal can factor into her ability to pay a costs award if a costs order is made. This information should set out all her net income received each month including any benefits paid to her, and then should also set out her outgoings in the form of bills paid by her each month so that this Tribunal can assess her ability to pay any costs award should this Tribunal decide to make such an order."

19. No reply was received from the Claimant. The Respondent replied in the following terms, and I was forwarded this reply on the 14 August 2025 which was supported by a bundle of documentation, and which had been sent by the Respondents on the 3 July 2025: -

Dear Sir/Madam,

We attach a copy of the bundle as requested.

In response to the recent correspondence, please note the following:

1. The Respondent had instructed Stress Free HR for advice in relation to the dispute which arose between the Claimant and Respondents. This was prior to Peninsula being instructed to defend the matter on their behalf. Therefore, those costs are sought by the Respondent. (Pages 1-3 of the bundle of their involvement). However, the Respondent realises these were pre-action and leaves this determination on the Tribunal.

2. The Respondent entered into a retainer for £6,229.92 in total. The retainer included the £2,000 preparation and representation costs which included £1,000 for the hearing and £500 for subsequent hearings including the preparation.

3. The Respondent takes into account the Tribunals comments will seek costs at £2,000 instead of the costs claimed on an hourly rate.

20. At this point the Tribunal noted that they now sought costs of £2,000.00 as this being said to be the part of the retainer of £6,229.92 that related to representation in these proceedings. This sum of £2,000.00 was simply a proportion of a fixed fee for the year, presumably the rest being for general HR services provided by Peninsula to the Respondent to any employment law issues unrelated to these proceedings. No reply was received from the Claimant although we note the Claimant was copied into the correspondence.

21. By this time I had moved to the Midlands East region from the South East region and so relisting this matter on a date we could all be available was difficult due to the different availability of the panel. It was then listed for today's date this being the first date the panel could sit. We have considered the history of the Claimants conduct and the various bases on which the Respondent put its claim for costs which at times was not at all clear.

22. The history of this claim has been set out in previous case management orders and in our Judgment dismissing the claim under Rule 47. However, we repeat what we said in that Judgment to set out the conduct of the Claimant in these proceedings.

1 *Following a period of Early Conciliation from 5 September 2022 to 17 October 2022, the Claimant presented a Claim Form on 21 December 2022 pursuing claims for Harassment [s.26], Direct Discrimination [s.13], and Victimisation [s.27] contrary to the Equality Act 2010 on the grounds of race.*

2 *By a Response Form filed on 13 February 2023, the Respondent resisted the claims, and denied that any treatment of her in any way related to, or was because of her race, or was because she had raised a grievance complaining about race discrimination.*

3. *The notice of this hearing, set to be heard from the 10 – 12 June 2024, was set down at a Preliminary Hearing conducted by myself on the 27 November 2023, and as set out in my Case Management Order sent to the parties on the 13 December 2023.*
4. *The previous Preliminary Hearing in Huntingdon on the 27 November 2023, had originally been a final hearing and was converted by Judge Ord to a Preliminary Hearing before myself that day and this was due to the parties not being ready for the hearing as arguments had ensued over the hearing bundle.*
5. *In addition at that Preliminary Hearing a costs application had been made by the Respondent at which allegations were made about the Claimants failure to comply with the orders made to prepare for the hearing. In the event another costs application was repeated today, and it was ordered such application would be dealt with in writing either on paper, or by way of a further costs hearing.*
6. *The Claimant did not attend the hearing today and we noted that my previous order that the Claimant disclose her bank statements by the 11 December 2023 had not been complied with.*
7. *In addition no supplementary witness statement had been prepared by the Claimant as ordered by me at that hearing, at which her solicitors had represented her, nor had the Claimant prepared any supplementary bundle as ordered, and at todays hearing she had also not sent her main witness statement to the Respondents despite them indicating that they were ready to exchange statements.*
8. *The clerk to the Tribunal telephoned her today, and stated that a hearing was taking place today at 10.00 am that she was required to attend. The Claimant asserted that she did not know about the hearing. She then asserted she had been trying to obtain some documents from her previous employer but they hadn't replied to this request, and that she still didn't have her P.45, and that her lawyers had tried to contact them as well. The clerk indicated that a link had been sent to her so that she could join the hearing by CVP, and that we were waiting for her to join the hearing. She replied by asking whether that meant 'right now right this second?' and the clerk confirmed that was correct. After a short lapse of time the call then disconnected.*
9. *The clerk then tried to call her back and the call was not answered. The clerk called again and on the third occasion a longer call took place. On this call she repeated that she was not aware of todays hearing but then advised that she had just come across a variety of emails in her inbox that she had never read before. The Clerk then advised her of an email from her Solicitor*

Mr Hyland of PJH Law where they advised the Tribunal by way of email on the 12 December 2022, and which they attached and also sent again by way of an attachment to an email on the 20 May 2023, that they were no longer instructed by, or represented the Claimant. The Claimant stated that she had not given them permission to pass on her personal contact details to the Tribunal. She became distressed and said that she was going through radiotherapy and wanted to lead a happy life with her husband.

10. *She also confirmed that she could not attend the hearing as she was at work in her HR role.*
11. *The clerk also asked her to confirm this in writing and she replied that, 'I am typing this now.'*
12. *This Tribunal had no evidence of the Claimants ill-health. We also noted that she stated that she was at work at the time of this hearing.*
13. *We also noted that she had been sent the pre hearing checklist as evidenced by the email to her email of the 28 May 2022 from the Employment Tribunal which she was advised she must fill in and return by the 31 May 2022, and this pre-hearing checklist referred to the final hearing of today's date for three days.*
14. *She was called three times and she made clear she was not attending the hearing today. She was clearly well enough to be at work and so was clearly well enough to attend the hearing today. She hadn't contacted the Tribunal in advance of today to say she wouldn't be coming. We were satisfied she knew about the hearing today.*
15. *She said was going to email ET with confirmation of why she did not attend and told the clerk that at around 10.30 am. We waited until 11.30 but no email arrived attaching any actual evidence of ill health.*
16. *Rule 47 of Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, the "Tribunal Rules", provides as follows:*

"If a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party.

Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the parties' absence."
18. *We are satisfied the Tribunal made such enquiries as were practicable about the reason for the Claimant's non-attendance. The Tribunal made telephone contact with the Claimant and having only been told that she was*

unwell due to radiotherapy. We do not consider this to be a valid explanation in the absence of any medical evidence or a detailed explanation. It was incumbent upon the Claimant to fully explain her reason for not attending this hearing, including providing details of her medical condition and why she had not informed the Tribunal or the Respondent's representative that she would not be attending this hearing. I was satisfied from the Tribunal file and from the calls made by the clerk today that the Claimants assertion she was not aware of this hearing were unfounded, and she made no attempt to make contact either with the Tribunal or the Respondent's representative to explain her non-attendance prior to the Tribunal contacting her today.

We also had regard to that the Respondents set out about her conduct in the costs application as set out above and in particular that:-

'Since then, the Claimant continued to not comply with the Case Management Order for disclosure. The final hearing had been postponed once and then the Claimant failed to attend the re-listed Final Hearing. The Claimant was provided with an opportunity to drop hands via ACAS but failed to respond. This could have avoided the preparation and the final hearing from proceeding. The claim in itself was brought vexatiously itself as the Claimant was aware she had been working for Citation. The documents produced by Citation have been included in the final hearing bundle.'

23. Thereafter as recorded the Claimant failed to attend the final hearing resulting in her claim being dismissed.
24. We find that the Claimant did fail to comply with orders made and generally did not pursue her claim or engage with the proceedings in any way.
25. We set out the law and then our conclusions.

THE LAW

26. The provisions of the Employment Tribunal Rules of Procedure 2024 provide as follows where appropriate: -

72. Definitions

In this Part—

“paying party” means a party liable to pay costs;

“preparation time” means time spent by the receiving party (including by any of the receiving party's employees or advisers) in working on the case, except for time spent at any final hearing;

“receiving party” means a party entitled to be paid costs.

73. Costs orders and preparation time orders

- (1) A costs order is an order that the paying party make a payment to—
 - (a) the receiving party in respect of the costs that the receiving party has incurred while represented by a legal representative or a lay representative, or
 - (b) another party or witness in respect of expenses incurred, or to be incurred, for the purpose of, or in connection with, an individual’s attendance as a witness at a hearing.
- (2) A preparation time order is an order that the paying party make a payment to the receiving party in respect of the receiving party’s preparation time while not represented by a legal representative.
- (3) A costs order under paragraph (1)(a) and a preparation time order may not both be made in favour of the same party in the same proceedings.
- (4) The Tribunal may decide in the course of the proceedings that a party is entitled to either a costs order or a preparation time order but may defer its decision on the kind of order to make until a later stage in the proceedings.

74. When a costs order or a preparation time order may or must be made

- (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.

- (4) Where in proceedings for unfair dismissal a final hearing is postponed or adjourned, the Tribunal must order the respondent to pay the costs incurred as a result of the postponement or adjournment if—
 - (a) the claimant has expressed a wish to be reinstated or re-engaged which has been communicated to the respondent not less than 7 days before the hearing, and
 - (b) the postponement or adjournment of that hearing has been caused by the respondent's failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the claimant was dismissed or of comparable or suitable employment.

75. Procedure

- (1) A party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties.
- (2) The Tribunal must not make a costs order or a preparation time order against a party unless that party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order).

76. 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;
 - ii. in Scotland, by way of taxation carried out either by the auditor of court in accordance with the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019, or by the Tribunal applying the same principles;
 - (c) another party or a witness, as appropriate, a specified amount in respect of necessary and reasonably incurred expenses for the purpose of, or in connection with, an individual's attendance as a witness at a hearing;

- (d) an amount agreed between the paying party and the receiving party in respect of the receiving party's costs.
- (2) Where the costs order includes an amount in respect of fees charged by a lay representative, for the purposes of the calculation of the order, the hourly rate applicable for the fees of the lay representative must not exceed the rate under rule 77(2) (the amount of a preparation time order).
- (3) A costs order under sub-paragraphs (b) to (d) of paragraph (1) may exceed £20,000.

77. The amount of a preparation time order

- (1) The Tribunal must decide the number of hours in respect of which a preparation time order should be made, on the basis of—
 - (a) information provided by the receiving party on the preparation time spent, and
 - (b) the Tribunal's own assessment of what it considers to be a reasonable and proportionate amount of time to spend on such preparatory work, with reference to such matters as the complexity of the proceedings, the number of witnesses and documentation required. (2) The hourly rate is £44 and increases on 6 April each year by £1.
- (3) The amount of a preparation time order must be calculated by multiplying the number of hours assessed under paragraph (1) by the rate under paragraph (2) which is applicable to the year beginning 6 April in which the preparation time was spent.

82. Ability to pay

In deciding whether to make a costs order, preparation time order, or wasted costs order, and if so the amount of any such order, the Tribunal may have regard to the paying party's (or, where a wasted costs order is made, the representative's) ability to pay.

27. In **Gee –v- Shell UK Limited [2003] IRLR82** Sedley LJ said:

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

28. Costs orders are the exception rather than the rule in employment tribunal proceedings, but that does not mean that the facts of the case must be exceptional (**Power v Panasonic (UK) Ltd UKEAT/0439/04**).

29. Such awards can be made against unrepresented litigants, including where there is no deposit order in place or costs warning (***Vaughan v London Borough of Lewisham* UKEAT/0533/120**).
30. In terms of abusive, disruptive or unreasonable conduct, “unreasonableness” bears its ordinary meaning and should not be taken to be equivalent of “vexatious” (***National Oilwell Varco UK Ltd v Van de Ruit* UKEAT/0006/14**).
31. In ***Millan v Capsticks Solicitors LLP & Others* UKEAT/0093/14/RN** the then President of the EAT, Langstaff J, described the exercise to be undertaken by the Tribunal as a 3-stage exercise, which in essence is as follows:
- 31.1 Has the putative paying party behaved in the manner proscribed by the rules?
- 31.2 If so, it must then exercise its discretion as to whether it is appropriate to make a costs order, (it may take into account ability to pay in making that decision).
- 31.3 If it decides that a costs order should be made, it must decide what amount should be paid or whether the matter should be referred for assessment, (again the Tribunal may consider the paying party’s ability to pay).
32. The tribunal does not need to identify a direct causal link between the unreasonable conduct and the costs claimed (***MacPherson v BNP Paribas (London Branch) (No 1)* [2004] ICR 1398**).
33. In ***AQ Ltd v Holden* [2012] IRLR 648** HHJ Richardson said:
- “... [32] The threshold tests in r 40(3) are the same whether a litigant is or is not professionally represented. The application of those tests should, however, consider whether a litigant is professionally represented. A tribunal cannot and should not judge a litigant in person by the standards of a professional representative. ... Justice requires that tribunals do not apply professional standards to lay people, who may be involved in legal proceedings for the only time in their life. As Mr Davies submitted, 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 r 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...”
34. The Tribunal has a discretion, not an obligation, to consider means to pay. This was considered in the case of ***Jilling –v- Birmingham Solihull Mental Health NHS Trust* EAT 0584/06**. It was established in that case that if we decide not to take into account the party’s means to pay, we should explain why, and if we decide to do so, we should set out our findings about the ability to pay, what

impact that has had on our decision whether to award costs and if so, what impact means had on our decision as to how much those costs should be.

35. In ***Yerrakalva v Barnsley Metropolitan Borough Council* [2012] ICR 420 (paragraphs 39 – 41)** it was emphasised that the tribunal has a broad discretion, and it should avoid adopting an over-analytical approach, for instance by dissecting the case in detail or attempting to compartmentalise the relevant conduct under separate headings such as "nature", "gravity" and "effect". The words of the rule should be followed, and the tribunal should:

"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".

36. The Court of Appeal in ***Yerrakalva*** made it clear that although causation was undoubtedly a relevant factor, it was not necessary for the tribunal to determine whether there was a precise causal link between the unreasonable conduct in question and the specific costs being claimed. Furthermore, the circumstances do not need to be separated into sections, each of which in turn forms the subject of individual analysis, risking the court losing sight of the totality of the relevant circumstances.

Conclusions

37. There are three stages in determining whether or not to award costs under Rule 74 ET Rules; first, whether the party has reached the threshold of establishing that a party had acted vexatiously, abusively or disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; and that a claim had no reasonable prospects of success. Second, if the threshold has been reached, the tribunal will go on to consider whether it is appropriate to make an order for costs. Finally, if it is appropriate to make an order for costs, the tribunal will go on to consider the amount of such order.

Threshold - Are There Grounds for Making a Costs Order?

(1) Conduct – Rule 74.2(a)

38. It is incumbent on the Tribunal to satisfy itself that the conditions in Rule 74 apply before any order can be considered.
39. We note that the Claimant was a litigant in person while the Respondent was professionally represented. We do not judge her against the same standards as we would a professional representative. We recognise that litigants in person can lack objectivity in relation to their own claims, and it is often not easy for them to feel a sense of trust towards a former employer or their professional representative during a legal dispute.

40. However, the Claimant's conduct meant that the tribunal had to conduct a final hearing that she then failed to attend. She refused to engage with the Respondents in any meaningful way throughout and breached Tribunal Orders.
41. In the circumstances, the tribunal finds that the Respondent has established that the Claimant's conduct was unreasonable as defined in Rule 74 (2)(a) of the Employment Tribunal Rules of Procedure in respect of the Costs Application, and that this threshold was met in terms of the test which was whether the Claimant has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted, and we concluded that the threshold test was met.

Should a Costs Order Be Made?

42. We consider a number of factors in deciding whether to exercise our discretion to make an order for costs. Although there are grounds for making an order against the Claimant, the decision to do so is still at the Tribunal's discretion. As stated above, it remains the case that costs orders in the Employment Tribunal are the exception rather than the rule, and there are three factors we should consider. Firstly, the Claimant is a litigant in person conducting her case against a professionally represented party, secondly, we should consider whether to take into account her financial means, and finally we should consider the nature of the allegations made.
43. As to the first factor Tribunals are prepared to give unrepresented parties more latitude in the way they conduct litigation. However, the Claimant's conduct of litigation, has fallen drastically short of an average litigant in person. She failed to engage with the proceedings completely and despite stating she would provide medical evidence of why this was so failed to do so at any point in the proceedings.
44. As for the second factor the Claimant has been given an opportunity to make representations about her ability to pay but has failed to do so.
45. In the circumstances, we do not have regard to the Claimant's ability to pay any costs order as she has failed to submit anything about this.
46. Thirdly and looking at the whole picture, as *Yerrakalva* suggests we do, and the claims brought, we find that the Claimant acted unreasonably, by bringing the claim and then failed to engage in the proceedings and by failing to attend the final hearing.
47. Drawing all these factors together, we were of the view that this was one of those rare cases where it was appropriate to make a costs order against the Claimant.

The amount of the order for costs

48. Given that costs are compensatory, and we remind ourselves that despite the Claimant's unreasonable behaviour they are not punitive, it is necessary to examine what loss has been caused to the receiving party. In this regard the Court of Appeal in *Yerrakalva*, held that costs should be limited to those

'reasonably and necessarily incurred'. Furthermore, the amount of loss will not necessarily be determinative, since a tribunal may consider other factors, such as the means and the conduct of the parties.

49. The Respondent now claim the sum of £2000.00 including VAT. These were it was said their total costs in the defence of this claim and were said to be the proportion of the total retainer that Peninsula has charged to them for representation in these proceedings. For two preliminary hearings, followed by a final hearing, we asked if these costs were reasonably and necessarily incurred, and were proportionate.

50. We were asked to consider the costs based on the information provided and noted that Ms Younis is a practising solicitor working for Peninsula and assisted by a legal executive. The way the claim for costs has been put has changed throughout and was not always clear. Although still not entirely clear this sum of £2000.00 appears to be put on the basis of a lay representative who has charged a fixed annual retainer with the sum of £2000 being carved out for representation in these proceedings. The applicable rate at the time was £41.00 per hour. However, Peninsula in this regard said as follows: -

2. The Respondent entered into a retainer for £6,229.92 in total. The retainer included the £2,000 preparation and representation costs which included £1,000 for the hearing and £500 for subsequent hearings including the preparation.

3. The Respondent takes into account the Tribunals comments will seek costs at £2,000 instead of the costs claimed on an hourly rate.

51. We noted that on the schedule of costs 58 hours of preparation and attendance at Tribunal were set out. If we had assessed this on the basis of lay representative rates i.e., a preparation time order that would have totalled £2378.00 plus vat.

52. We were however being asked to simply assess the costs claimed instead as a proportion of an annual retainer. We were not referred to any case law setting out our ability to do so. We take at face value that the sum of £2000 did relate to representation in this claim although we were not sent the retainer letter between the Respondent and Peninsula showing how the costs were apportioned between the annual fee and the representation in this claim and the figure seemed be very much an approximated figure. We therefore make this order on the basis of a preparation time order in accordance with Rule 77 in that a lay representative incurred time representing the Respondent, this being Peninsula, and who do not charge on an hourly rate but instead fix annual retainers to cover any live claims at the time they do so.

53. As we have set out above, the core unreasonableness of the Claimant in her conduct throughout gave rise to these costs. This order is made on the basis of the unreasonable conduct of the proceedings. *MacPherson* makes clear that we do not have to identify a direct causal link between the unreasonable conduct and specific costs being claimed. We also do take into account the fact the Claimant was a litigant in person. We therefore accept that some costs of the retainer were linked to this claim although we do not have specific evidence of

how that was fixed in the retainer agreement as to the defence of this claim. However, it is clear that costs were incurred in the defence of this claim.

54. The amount we award in costs is at the discretion of this Tribunal, and we also take into account the nature of the information provided by the Respondent about their retainer with those that represent them.

55. Applying *Yerrakalva* we award costs in the sum of £250.00.

Approved by:

Employment Judge Brown

27 February 2026

Judgment sent to the parties on:

2 March 2026

For the Tribunal:

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

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

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