EMPLOYMENT TRIBUNALS

Claimant:	**Miss B Littlewood**	
Respondent:	**Nuffield Health**	
Heard at:	**Cardiff and in chambers**	**On: 18 and 19 February 2026 and 20 March 2026**
Before:	**Employment Judge S Moore**	
Members:	**Mr C Williams** **Mr A Fryer**	

Representation:
Claimant: In person
Respondent: Mr Smith (Counsel)

RESERVED JUDGMENT

The Claimant is awarded a preparation time order. The Respondent is ordered to pay the Claimant the sum of £3,036.00.

REASONS

Background and Introduction

1. The liability judgment was promulgated on 15 August 2025. A preliminary hearing for case management on remedy was listed on 3 October 2025.

Also on this date the claimant made an application for a preparation time order "PTO"). The remedy hearing was listed on 18 and 19 February 2026 to deal with remedy and the PTO application. A number of orders were made including the respondent filing a counter schedule and comments on the PTO application, disclosure, preparation of a remedy bundle and exchange of witness statements:

No	Order	Date for compliance
1	Para 11 – respondent to comment on application for PTO	17 October 2025
2	Para 13 - respondent to file a counter schedule of loss detailed with rationale and calculations	31 October 2025
3	Para 14 – disclosure	14 November 2025
4	Para 16 – respondent to send draft index to bundle	28 November 2025
5	Agree index to bundle	12 December 2025
6	Para 17 – respondent to send claimant bundle	9 January 2026
7	Para 24 – witness statement exchange	30 January 2026

2. On 10 November 2025 the claimant wrote to the Tribunal to advise that the respondent had failed to comply with orders 1 and 2. On 14 November 2025 the claimant advised the respondent had failed to comply with order 3.

3. On 19 November 2025 the Tribunal wrote to the respondent and ordered the respondent to write to the Tribunal copied to the Claimant by return to explain their continuing non compliance with the order 1 and 2. The respondent was warned if they failed to reply within 2 working days Judge Moore will issue a warning that the response will be struck out for failing to actively pursue and breaching Tribunal orders. The respondent was reminded of the importance of the counter schedule of loss given the lack of transparency over the Claimant's pay as set out in the liability judgment. The parties were also required to update the Tribunal by return as to whether they had disclosed documents (due by 14 November) and the remaining directions were on track for compliance.

4. On 21 November 2025 the respondent's solicitor wrote to the Tribunal apologising for the period of inability to deal with this matter attributing it to

illness by the solicitor with conduct of the matter. No medical evidence was provided. The respondent told the Tribunal that "any outstanding directions in this case will be addressed in the first half of next week".

5. On 21 November 2025 the claimant told the Tribunal that the respondent was still in breach with order 3 (disclosure). The claimant pointed out that the respondent had not asked for extensions of time nor explained why the case could not be dealt with by another fee earner. The claimant asked the Tribunal to consider a strike out.

6. On 25 November 2025 the Tribunal wrote to the Respondent and noted illness did not excuse the respondent's continuing failure to comply with case management orders or apply for extensions of time to comply. It was noted that Freeths is a large law firm and no explanation had been proffered as to why there was not another fee earner within Freeths that could cover the work The explanation was unsatisfactory and lacking in supporting medical evidence. Further, there was now a second assurance that orders would be complied with and it was now mid week and no such compliance has been forthcoming which the Tribunal was finding disrespectful. The following strike out warning was issued:

a. On the Tribunal's own initiative and having considered any representations made by the parties, in accordance with Rule 38 of the Employment Tribunal Rules of Procedure;

b. Employment Judge Moore is considering striking out the response relevant to the issue of remedy. It appears a fair hearing is no longer possible because:

c. the manner in which the proceedings have been conducted by or on behalf of the respondent has been scandalous, unreasonable or vexatious;

d. you have not complied with the Orders of the Tribunal dated 3 October 2025 at paragraphs 11, 13, 14 and 16 appears it will also not be met. No permission has been sought to extend time;

e. it has not been actively pursued.

7. On 26 November 2025 the Respondent's representative replied with submissions as to why strike out should not take place, purported to comply with order 1 and submitted a costs application against the claimant based on allegations about the claimant's conduct in 2023 and 2024 that she had failed to clarify her claims. This costs application appeared to be retaliatory, having been made so late and only after the claimant's PTO application. It was wisely withdrawn at the remedy hearing. The response to the PTO did

not address the claimant's application in any meaningful way instead focussing on the claimant's conduct as above.

8. On 10 December 2025 Judge Moore ordered the Respondent to comment why another fee earner had not complied with orders in the fee earner's absence.

9. On 17 December 2025 at 23.55pm, five minutes before the date for compliance, the Respondent replied asserting that dealing with relevant issues required knowledge of what happened in the remainder of the proceedings and the decisions at the liability hearing. This was not an acceptable explanation as it did not explain why other fee earners could not have asked for extensions of time. It is noted that the fee earner had been well enough to draft and submit a costs application yet says he was not well enough to comply with case management orders or ask for extensions of time. There was still no medical evidence provided.

10. The email asserted as of 17 December 2025 all outstanding steps had been addressed.

11. On 12 January 2026 the claimant informed the Tribunal that as at 17 December 2025 the Respondent was in breach of the order 4 (to send a draft index to remedy bundle by 28 November 2025), order 5 (agree the index by 12 December 2025) and order 6 (to prepare and serve the agreed remedy bundle by 9 January 2026).

12. On 28 January 2026 the Tribunal raised these matters with the respondent and commented that if the above was correct, the respondent's email of 17 December 2025 may have misled the Tribunal. The respondent was ordered to comment on whether they agree the above orders remain in breach and if so why, no later than 4pm on 30 January 2026.

13. The respondent did not reply by the date ordered. A reply was sent on 2 February 2026. The reason for the delay was that the fee earner was out of the office and an auto reply would have been sent. The explanation was as follows:

With reference to the letter it attached, the Respondent does not agree that orders remain in breach. When we wrote to the Tribunal on 26 November 2025 we noted that in all likelihood the parties' disclosure would simply be combined. No opposition to that position was received. What the Claimant's email to the Tribunal on 12 January 2026 did not however include was an indication that she only provided access to her disclosure in mid-December. It is surprising to say the least that the

Claimant should seek to take a point about compliance when she knows that it was impossible for the Respondent to produce a draft index on 28 November, for example, or take any other steps because she had not provided access to her documentation. Had a bundle been prepared then it would necessarily have contained the Respondent's documentation only, as it was only the Respondent which had at that point completed its disclosure.
Obviously the Respondent did not take this course, and indeed it did not take issue with the position as opposed to simply continuing to seek to prepare a bundle in due course. When access was provided the Claimant's documents, which ran to hundreds of pages, had to be reviewed before a bundle could be produced. The festive break and weather complications caused in the first half of January then followed. A bundle was produced which, as had previously been indicated, simply combined the parties' disclosure. Indeed, it even used the Claimant's own index and her wording in terms of descriptions of documents. A limited number of documents disclosed by the Respondent were added at the end of this, but fundamentally the bundle reflects the Claimant's disclosure. A few pages (or in some cases parts of pages) of the Claimant's documentation were not included as they cannot be, as has been explained to the Claimant by multiple Judges and which has also been the subject of a previous judgment (notably ACAS correspondence). This was explained to the Claimant. The Claimant downloaded the bundle on 15 January 2026. An email dated 29 January 2026, notably the day after the Tribunal's email below, has been received indicating that the Claimant does not agree the bundle. The Claimant indicated that an objection was "the exclusion of certain documents that were already disclosed and included in the agreed liability hearing bundle" which we do not understand, the approach taken has been set out above and the bundle simply includes what both parties disclosed, if documents from the liability bundle were to be included then they should have been disclosed already as the Claimant has done for numerous items within the remedy bundle. Surprisingly the Claimant again referred in her email to the lack of draft index on 28 November 2025 but again failed to acknowledge when she provided access to her own documentation. The Respondent does not see how the Claimant can repeatedly seek to take a point against it, in correspondence both directly with it and to the Tribunal, when she herself knows the position in respect of her documents. This is particularly the case when both she and the Tribunal have referred to the Respondent potentially misleading the Tribunal.

In this respect, the Respondent does not accept that its previous correspondence was misleading. Firstly, as above, the Claimant herself knew precisely the position when she wrote to the Tribunal. Beyond this

however our email of 17 December 2025 was on its face continuing the previous correspondence dated 26 November 2025, to which the Tribunal's email dated 10 December 2025 referred. In our email of 26 November 2025 we referred to the outstanding issues having been addressed, and it was these outstanding steps that were also referenced in the email of 17 December 2025 as it was understood that this was what the Tribunal's correspondence was addressing. Regrettably the Respondent also cannot accept the references to being able to draft an appeal and a costs application within the Tribunal's letter. As the Tribunal will be aware, the appeal was drafted before the case management hearing for remedy in this matter took place, and the Respondent's costs application was addressed alongside dealing with other case management steps in this case and indeed it was contained within a single document dealing with both. It appears to the Respondent that there is a suggestion that those steps have been taken instead of case management but that is not the case and it cannot be borne out by the chronology of these proceedings.

For clarity, the Respondent is not relying on witness evidence at the remedy hearing and therefore it has no statements to serve.

14. On 5 February 2026 the Tribunal wrote to the parties and advised that the Tribunal would decide whether to strike out the respondent's response as a preliminary matter at the remedy hearing. The claimant was ordered to prepare to address the assertions in the respondent's email of 2 February 2026. The respondent was told the Tribunal remained unsatisfied with the explanation above and took the unusual step of requiring the managing parter of Freeths to provide a witness statement as to the arrangements for covering orders and correspondence of the Tribunal in the absence of fee earners.

15. At the remedy hearing, the claimant was able to demonstrate the following:

a. The claimant did comply with the order for disclosure on 14 November 2025. The documents were password protected, a practice that the respondent introduced in these proceedings, and the claimant told the respondent she would provide the password once their disclosure was sent;

b. The respondent's disclosure was not sent until 26 November 2025;

c. The reason the claimant's disclosure had not been accessed until mid December 2025 was because the respondent's solicitor had failed to

comply with the disclosure order on time. The claimant was then abroad and provided the password on her return on 8 December 2025. It was therefore disingenuous to attribute blame to the claimant for this state of affairs.

d. The claimant's disclosure was accessed on 8 December 2025. There was no applications for extensions of time, just further repeated breaches in orders. The solicitor then blamed "the festive break and weather complications" for the failure to serve the bundle by 9 January 2026. Again no application had been made for permission to extend time. The respondent subsequently produced a bundle on 15 January 2026 unilaterally, which had not been agreed, again in breach of orders. The claimant accessed the bundle but asserted it was missing content. The claimant therefore had to prepare a separate bundle for the remedy hearing.

16. On 30 January 2026 the claimant served her witness statement. No witness statements were served by the respondent and they did not tell the claimant they did not intend to rely on witnesses until 2 February 2026. The respondent therefore also breached order 7.

Decision on strike out

17. The Tribunal heard submissions from the claimant and counsel for the respondent at the outset of the preliminary hearing. The above conduct is set out in this judgment as it was conduct relied upon in the application for a PTO.

18. Notwithstanding the conduct of the respondent above, which the Tribunal determined was wholly unreasonable, the parties were ready to proceed to the remedy hearing. As a fair trial was still possible the Tribunal decided not to strike out the response.

The Law

19. The power to award costs is set out in Part 13 of the Employment Tribunal Rules of Procedure 2024 ("the Rules"). The relevant Rules are 74 and 77. Rule 72 defines preparation time as 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;

74 When a costs order or a preparation time order may or shall 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.

20. Rule 77 provides: The amount of a preparation time order

77.—(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.

21. Costs are the exception – not the rule. This is a fundamental principle. The Employment Tribunal is not a "no costs" jurisdiction – the fact there are costs rules shows that that proposition to be incorrect. But the powers are curtailed. Costs for example do not follow the event: the winner does not secure a costs order against a loser simply because they won.

22. The Tribunal was not referred to any authorities by the parties. The following are the general authorities we have had regard to in reaching our decision.

23. **Radia v Jefferies International Ltd [2020] IRLR 431, EAT** sets out the approach to be taken when considering a costs order. The first question for a tribunal considering a costs application is whether the costs threshold is crossed, in the sense that at least one of r 76[1](1)(a) or (b) is made out. If so, it does not automatically follow that a costs order will be made. Rather, this means that the tribunal may make a costs order and shall consider whether to do so. That is the second stage, and it involves the exercise by the tribunal of a judicial discretion. It is an error to move from stage 1 to stage 3 and to omit stage 2; **Abaya v Leeds Teaching Hospital**

[1] Now R74

NHS Trust UKEAT/0258/16 EAT; **Edenbeck Limited v Stevenson [2023] EAT 128 EAT**.

24. 'Reasonable prospect' of success is an objective assessment. The issue is not whether the party thought they were in the right but is whether they had reasonable grounds for thinking they were in the right: **Scott v Inland Revenue Commissioners [2004] ICR 1410 CA; Hamilton-Jones v Black UKEAT/0047/04 EAT.**

25. The mere existence of factual disputes in the case, which could only be resolved by hearing evidence and finding facts, does not necessarily mean that the tribunal cannot properly conclude that the claim had no reasonable prospects from the outset.

26. The third stage is to then consider the amount of the award and the form of the award.

27. Abusively or disruptively and unreasonable have an ordinary, everyday, objective, meaning (**Dyer v Secretary of State for Employment EAT 183/73).** Unreasonably can include pursuing an unmeritorious claim and one can have regard to what the paying party knew or ought to have known: **Keskar v Governors of All Saints CofE School [1991] ICR 493.**

28. Lying in evidence will not automatically result in a finding of unreasonable conduct. A false allegation at the heart of the claim may do **(Daleside Nursing Home Limited v Mathew UKEAT 0519/08 EAT)** but a lie of less gravity and effect may not be: **Kapoor v Governing Body of Barnhill Community High School UKEAT/0352/13 EAT.**

29. In terms of the amount of a PTO, the Tribunal should consider what is a reasonable and proportionate number of hours referring to the complexity, witnesses and documentation required. There is no limit on the amount that can be awarded under this rule. "Proportionate and reasonable" requires balancing the fact that a litigant in person who represented themselves will be slower than a lawyer but that there is still a boundary beyond which reasonable preparation time becomes excessive.

Conclusions

Ground one - Failure to Comply with Case Management Orders & Disclosure

30. This related to three matters.

I. The respondent's failure to comply with Judge Braces's order dated 15 January 2024 at paragraph 15 in summary to tell the Tribunal and the claimant how they had calculated her wages and holiday pay. See liability judgment findings at paragraphs 9, 10, 11, 13, 14, 176, 179, 187. The respondent remains in breach of this order as of the remedy hearing. The Tribunal does not accept that the respondent complied with the order by the document at page 1011 of the liability bundle. As can be seen from our decision this significantly hampered both the claimant and the Tribunal in understanding the respondent's positions in respect of the financial claims. We have no doubt that the claimant had to spend a significant amount of time in collating her own schedules from her records that had been kept and making the calculations. Their payroll witness, Mr Ives, produced only a 2.5-page statement with no documents, which the Tribunal criticised as "extremely sparse" and "unhelpful". The respondents conduct was unreasonable and in breach of orders. The threshold is met and we consider the discretion to award costs should be exercised. We award the following time in respect of this conduct:

26 June 2023 – preparing detailed spreadsheet of wages, holiday, and sick pay calculations – 3 hours;

5 April 2024 - Drafting second Further & Better Particulars (as the respondent had failed to comply with Judge Brace's order) – 2 hours.

II. Key contemporaneous documents were missing or redacted without explanation, including the Claimant's protected disclosure email and payroll records. The Tribunal agrees that the documents cited were missing. It is not clear what time had to be spent addressing these matters as such no award is made.

III. The Respondent submitted late evidence on 30 June 2025, forcing the Claimant to prepare additional spreadsheets and cross-check calculations at great personal cost.

31. This related to documents the respondent disclosed on 26 June 2025 that were admitted. These documents should have been disclosed earlier in proceedings but were not (they related to the investigation meeting and the issue of rates of pay). The conduct was unreasonable and in breach of the order for disclosure. The threshold is met. The claimant objected to the late disclosure and was given the opportunity to comment. To that end the claimant prepared a long email dated 30 June 2026 addressing her position on the late disclosed documents. The claimant had not provided a specific breakdown of hours spent on this task, but having regard to the content of the email, necessary research and sourcing of other documents it is reasonable to award the claimant 3 hours preparation time.

Ground 2 - Misleading and Contradictory Evidence

32. This related to the following matters:

The Tribunal found serious credibility issues with the Respondent's witnesses:

a. Mr Cheadle: His witness statement denied any agreement for three hours Les Mills practice pay. Under cross-examination he admitted the agreement existed and was authorised for months. The Tribunal said it was "extremely unfortunate" his false account was maintained until oral evidence;

b. Mr Wilcock: His written statement said he personally investigated a grievance. Under cross-examination he admitted he had done nothing; HR wrote the report. The Tribunal described his statement as "at best misleading and at worst untrue";

c. Mr Ives: His evidence contradicted the Respondent's own documents and government guidelines on holiday pay, and he admitted that underpayments were not corrected retrospectively;

d. Judge Moore was forced to remind Respondent witnesses mid-hearing about the "importance of accuracy and truthfulness" — an extraordinary intervention, showing the extent of the Respondent's failings;

e. These contradictions wasted Tribunal time and forced the Claimant to spend additional hours in cross-examination preparation, including producing a supplemental bundle of clearer documents to correct errors in the Respondent's.

33. See liability judgment at paragraphs 9, 10, 11 , 12, 13, 14, 16, 18, 19 – 22, 63, 73 – 79. In our judgment it was abusive and unreasonable to maintain a position in evidence in a written statement and resile from that position under cross examination. It is reasonable to exercise the discretion to make an order. If the witnesses had been truthful and the respondent assisted the Tribunal by providing sensible and understandable information about pay and holidays a lot of unnecessary preparation could have been avoided. The claimant claimed 3 hours preparation time for cross examination per witness. We award the claimant 9 hours preparation time for preparing for Mr Cheadle, Mr Wilcock and Mr Ives.

34. The claimant also claimed an additional 20 hours preparation time overnight during the final hearing due to the changes in evidence. We agree that the claimant would have had to revise her preparation and review documents

in the evenings given the evidence given by Mr Cheadle and Mr Wilcock. We award the claimant 7 hours preparation time.

35. We also award the claimant 6 hours for preparation of the supplementary bundle which had to be produced as documents in the bundle prepared by the claimant were illegible and missing some of her documents.

36. The total award thus far is 30 hours.

Unreasonable Conduct Throughout Proceedings

37. This relied on three grounds:

38. The Tribunal itself recorded that it had “great difficulty” understanding the Respondent’s pay slips and holiday pay system, whereas the Claimant’s records were “meticulous” and accepted as accurate. We consider that we have already made a PTO in respect of this above at paragraph 30 (i).

39. Payroll queries went unanswered, leaving the Claimant in financial hardship. Conduct during the employment relationship cannot form the basis for a PTO.

40. The Respondent threatened the Claimant with costs on several occasions, including a formal letter dated 4 April 2025. That letter sought to intimidate the Claimant into withdrawing, even though the Tribunal’s findings later confirmed that the Respondent’s own evidence — not the Claimant’s — was contradictory and misleading. The costs warning letter relies on the claimant having failed to particularise her claims and tell the Tribunal about the first claim when the second claim was lodged. The tone of that letter was unnecessarily aggressive and alleged the claimant was lying as she had failed to tick a box on the ET1 saying there was a second claim. It was unreasonable to make this allegation against the claimant as a litigant in person. However the Tribunal declines to make a PTO in regard to this letter as the claimant has not set out what time she spent dealing with the letter

Conduct after liability hearting to remedy hearing

41. The claimant sought preparation time in respect of having to address the conduct of the respondent which is set out at paragraphs 1 - 16 above. The respondent was in persistent breach of orders almost resulting in a strike out of their response. The respondent is fixed with the conduct of their representative. The threshold is met and it is appropriate to make an order. The claimant sought 154.5 hours which equates to 4.5 working weeks. We do not award the time claimed relative to preparation for the remedy hearing which would have been required in any event.

42. Applying a broad brush approach, we award the claimant the following preparation time:

    Oct-Nov 2025 Monitoring compliance with Tribunal directions (repeated checks, correspondence, calls to Tribunal) – 6 hours;

    10 Nov 2025 Drafting detailed non-compliance email to Tribunal - 3.75 hours;

    Jan 2026 (various) Continued monitoring of non-compliance; correspondence with Tribunal and Respondent 6.5 hours;

    15 Jan 2026 Reviewing bundle; identifying missing / redacted pages; analysing costs threats - 5 hours;

    26–30 Jan 2026 Preparing non-compliance bundle; reviewing Tribunal correspondence; finalising submissions - 10.25 hours claimed, awarded 5 hours for having to prepare the bundle;

    Preparation of PTO application and supporting submissions - 6.75 hours (bundle preparation not awarded as already awarded above).

    Total – 39 hours.

43. The total preparation time awarded is therefore 69 hours.

Approved by
Employment Judge S Moore
Dated: 30 March 2026

REASONS SENT TO THE PARTIES ON

31 March 2026

Katie Dickson
FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS

Notes

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

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge.

There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

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