



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr S Murrell

v

Norse Commercial Services Limited

Heard at: Norwich

Tribunal Reading Day: 3 February 2026

Hearing and Judgment: 4 and 5 February 2026

Before: Employment Judge Tynan

Appearances

For the Claimant: In person

For the Respondent: Mr N Ashley, Counsel

For Hatch Brenner: Mr J Davies, Counsel

JUDGMENT on Wasted Costs Applications having been delivered orally on 5 February 2026 and written reasons having been requested by Hatch Brenner on 6 February 2026 in accordance with Rule 60(4) of the Employment Tribunal Rules of Procedure 2024, the following reasons are provided:

REASONS

1. The Claimant and the Respondent seek wasted costs orders against Hatch Brenner, the solicitors who represented the Claimant in his claims against the Respondent. Their applications were made on the same day, 29 July 2024, some months after the Claimant withdrew his claims.
2. I have been provided with a 2116-page bundle in connection with the wasted costs applications.

Rules and principles applicable to wasted costs applications

3. Tribunals are empowered, either on their own initiative or on the application of any party, to make a wasted costs order against a party's representative. Rule 78 of the 2024 Procedure Rules provides:

78. When a wasted costs order may be made

(1) A wasted costs order is an order against a representative in favour of any party where that party has incurred wasted costs.

(2) The Tribunal may make a wasted costs order in favour of a party, whether or not that party is represented, and may also make such an order in favour of a representative's own client.

...

(5) "Wasted costs" means costs incurred—

(a) as a result of any improper, unreasonable or negligent act or omission on the part of the representative, or

(b) which, in the light of any such act or omission occurring after they were incurred, the Tribunal considers it unreasonable to expect the receiving party to pay.

4. The procedure for making a wasted costs application is set out in Rule 80. I shall come back to the question of whether the applications in this case are apt for determination.

5. As Mr Ashley sets out in his skeleton argument, the leading general guidance is contained in the judgment of the Court of Appeal in Ridehalgh v Horsefield [1994] 3 All ER 848, approved by the House of Lords in Medcalf v Mardell [2002] 3 All ER 721). When considering whether to make a wasted costs order, a three-stage test should be applied:

(1) Has the legal representative about whom complaint is made acted improperly, unreasonably or negligently?

(2) If so, did such conduct cause the applicant to incur unnecessary costs?

(3) If so, is it, in all the circumstances, just to order the legal representative to compensate the applicant for the whole or part of the relevant costs?

Mr Ashley expands upon these matters in paragraphs 11(a) to (e) of his skeleton argument.

6. At paragraph 17 of his skeleton argument, Mr Ashley summarises Hatch Brenner's position as comprising of four propositions which he describes as misconceived or simply wrong. Amongst other things, he says that any suggestion that Employment Judge Postle's 31 May 2023 judgment on the Respondent's strike-out application can be impugned and revisited is "an impudent assertion which is also fundamentally misconceived". Having drawn the parties' attention to Jacobs J's judgment in King & Ors. v Stiefel

& Ors. [2023] EWHC 453 (Comm), specifically to what he said at paragraphs 81 to 90, Mr Ashley no longer maintains that particular submission. I think it pertinent to include what Jacobs J said at paragraph 83:

“ ... There is no authority which suggests that it is an abuse of process for a barrister or solicitor, in the context of a wasted costs application, to challenge aspects of the decision which has led to the application. The scope for such challenge is likely in most cases to be somewhat limited, because the prior decision (here of a High Court judge)– even if not binding as *res judicata* – would be persuasive authority as a matter of precedent. However, I see no reason why a barrister or solicitor should not be able to defend a wasted costs application by saying that the judge's view of a particular point was erroneous. I consider that this could be a permissible part of a defence to a case where the applicant is saying (to use the terminology of *Dempsey*) that no reasonably competent legal adviser could have considered that there were any prospects of success or could have pursued the case. A solicitor or barrister would in my view be entitled to say that one reason why a competent legal adviser could have considered that the case had a prospect of success was because, notwithstanding the judge's view ultimately expressed in the judgment, the argument advanced was sound. Generally speaking, however, legal advisers will not have to go so far; since their case will usually be that the particular point rejected by the judge was fairly arguable, even though the judge decided against it.”

The Claimant and Respondent's applications

7. The Respondent seeks, in the first instance, the entirety of its costs in defending the claims from the point at which it received notice of the first claim on 11 November 2021, up to the date that both claims were withdrawn. The particulars in support of its application are relatively brief, at five pages, though they pray in aid lengthier written submissions that were made in support of the Respondent's 2022 application to strike out the claims (the submissions are at pages 16 to 50 of the bundle). Those submissions are, in turn, supplemented by Mr Ashley's 10-page skeleton argument and a costs schedule and Scott schedule.
8. The Claimant's substantive application is in the form of a detailed written statement which runs to some 53 pages in total. It was supplemented on 4 February 2026 with an 8-page secondary statement which, for different reasons, was not objected to by the Respondent or Hatch Brenner.
9. The Claimant waived legal privilege when he submitted his wasted costs application. The bundle includes extensive documents from Hatch Brenner's case file, including file notes of advice given and copies of emails passing between the Claimant and the individuals at the firm who

had conduct of his claims, particularly Dionne Dury and Michael Judkins. The Claimant seeks recovery of one hundred per cent of the costs he paid to Hatch Brenner during Ms Dury and Mr Judkins' respective involvement in his case, namely in the period August 2021 to December 2023, in the sum of £22,049.40.

10. The wasted costs applications are opposed by Hatch Brenner. Its response to the applications extends to 68 pages.

Whether the applications are apt for determination

11. The parties' submissions run to some 179 pages in total. Neither Mr Davies nor Mr Ashley seems to have given thought to the question of whether the applications are suitable for summary determination. Although the applications were listed for a two-day hearing, with a further day set aside for reading in advance of the hearing, Mr Ashley confirmed that it had not specifically been discussed with Employment Judge Warren, who listed this hearing, whether the applications are suitable for summary determination. I cannot assume that the judge had this question in mind, less so that the hearing was a 'Stage 1' hearing at which such a determination was made, when this is not clear on the face of the hearing record. It has left me somewhat 'between a rock and a hard place'. Given the length and scope of the parties' submissions and the volume of materials included within the bundle, and given also that the wasted costs jurisdiction is intended to be a process for the determination of straightforward cases, I would have said that the applications were not suitable for summary determination. In Medcalf, Lord Bingham gave the examples of failures to appear, conduct which leads to an otherwise avoidable step in the proceedings, or an advocate being grossly repetitive and extremely slow in presenting evidence or making arguments, as circumstances might be apt for summary disposal. He went on to say at paragraph 24 of the judgment,

"Save in the clearest case, applications against the lawyers acting for an opposing party are unlikely to be apt for summary determination, since any hearing to investigate the conduct of a complex action is itself likely to be expensive and time-consuming. The desirability of compensating litigating parties who have been put to unnecessary expense by the unjustified conduct of their opponents' lawyers is, without doubt, an important public interest, but it is, as the Court of Appeal pointed out in *Ridehalgh v Horsefield*, at p 226, only one of the public interests which have to be considered."

12. As Jacobs J noted in his judgment in King, similar statements and sentiments can be found in a number of other cases, including by Lord Woolf, the Master of the Rolls, in Wall v Lefever [1998] 1F.C.R.605 and by Jackson J in Lady Archer v Williams [2003] EWHC 3048 (QB) in which he observed:

“Despite the best efforts of judges, and dare I say it, textbook writers, the true nature of the wasted costs jurisdiction is still insufficiently appreciated. This is a procedure to deal with relatively straightforward claims which are capable of summary disposal at a proportionate cost. It is not a vehicle for mounting a complex professional negligence action in circumstances where much of the relevant evidence is obscured from the court’s view.”

13. In my view, it matters relatively little that the Claimant has waived privilege so that the relevant evidence is not obscured from view. The fact remains that the applications involve a sustained and multi-layered critique of Hatch Brenner’s conduct of the proceedings, including their advice to the Claimant. Be that as it may, if I send the parties away, I may simply be redirecting their concerns elsewhere, certainly in the case of the Claimant. I take on board Mr Ashley’s point that even if there was no specific discussion at the hearing last September of whether the applications are apt for summary disposal, the parties have prepared for this hearing with the understanding and an expectation that the applications would be decided. I shall do so, but in a proportionate way consistent with the principle that wasted costs applications should be kept within sensible bounds and not permitted to develop into complex, costly satellite litigation. The sort of analysis that would be required if I were to engage point by point with the Claimant’s and the Respondent’s criticisms of Hatch Brenner would likely take several days, if not longer.

Did Hatch Brenner act improperly, unreasonably or negligently?

14. As I said on 4 February 2026, I was able to use the reading time that was allocated to me in familiarising myself not only with the parties’ respective submissions, but also the nearly 500 pages of documents appended to Hatch Brenner’s response to the wasted costs applications and which I understand to largely be their case file. I have re-read these documents in coming to this judgment, along with quite a number of further documents in the bundle, including correspondence said to have been withheld from the Claimant (the so called ‘Red Tab’ and ‘Green Tab’ documents). What these documents evidence to me is a friendly, constructive solicitor and client relationship throughout the course of which Hatch Brenner provided the Claimant with regular updates and estimates as to costs, as well as their considered advice as to his prospects of success and the risks associated with litigation. As any client might expect of their solicitor, the Claimant received what were in effect cost / risk / benefit analyses as the matter progressed. At the pre-action stage, the agreed aim was to secure a swift settlement for the Claimant under the terms of which he would leave the Respondent’s employment with a lump sum severance payment. His employment was not then at risk and indeed he continues to be employed by the Respondent. Ms Dury gave initial comprehensive advice by telephone on 1 September 2021, including on time limitation issues, reasonable adjustments, alleged harassment and an ongoing workplace grievance. She took care to establish what outcome the Claimant was

hoping to achieve. She also advised as to the risk of resigning and claiming constructive dismissal in the absence of any obvious recent repudiatory breach by the Respondent. Her advice was for the Claimant to pursue the grievance through to its conclusion. She went on to advise as to what a reasonable settlement might look like in an exit situation, putting this at between £5,000 and £7,000. Their initial discussion concluded with an estimate of the costs of preparing correspondence to the Respondent and in reviewing any response.

15. I have gone into a little detail on the matter because Ms Dury's note of their conversation (pages 1580 to 1583 of the bundle), the accuracy of which has not been disputed, evidences to me a solicitor exercising the care and skill one might reasonably expect of a solicitor holding themselves out as competent to advise on, and indeed a specialist in, employment law matters. In my judgement, the recommended course of action was what any reasonably competent solicitor would have advised. The quoted costs of £600 plus VAT were eminently reasonable for the estimated 3 hours of work that would be involved.
16. Ms Dury's attendance note is consistent with various other attendance notes she kept during her conduct of the case. They are admirably thorough and as I have already said, evidence that the Claimant was kept regularly updated as to the costs that had been incurred or which would likely be incurred in taking the matter to the next stage.
17. Within just a few days of their initial telephone discussion, Ms Dury had prepared drafts of two letters to be sent to the Respondent. She worked at pace when the Claimant provided reasonably detailed comments on the drafts as well as further documents for her to consider. The letters were finalised and sent early afternoon on 8 September 2022. The Claimant instructed Ms Dury to propose a severance payment of £20,000 notwithstanding her advice that a reasonable settlement was potentially less than one third that amount. Seven days later the Respondent replied to say that Mr Ashley's firm, Paladin was instructed. In the meantime, with a keen eye on time limitation issues, Ms Dury reiterated in an email to the Claimant her initial advice that if the claim or aspects of it were not already out of time, the primary time limit would expire on 24 September 2021 subject to any extension for acas early conciliation.
18. Mr Ashley emailed Ms Dury on 21 September 2021 responding to both her open and without prejudice correspondence (pages 58 and 60 of the bundle). It does not seem to be disputed that she only forwarded a copy of the response to the without prejudice settlement offer to the Claimant. Given Ms Dury's professionalism up to that point, I do not consider this to have been a deliberate attempt on her part to withhold or, as the Claimant says, conceal, evidence from him. Whilst I was not told that a solicitor is under a duty to share all and any correspondence passing between solicitors with their client (unless, of course, the client has specifically requested this), even assuming that the response to the open letter ought

to have been provided to the Claimant, in my judgement, for the reasons below, its provision would have made no difference whatever in terms of Ms Dury's advice or the Claimant's further instructions in the case.

19. The Claimant maintains that he would never have brought a tribunal claim against the Respondent had he been aware of the contents of Mr Ashley's response to Ms Dury's open letter. As regards the without prejudice settlement offer, this was rejected by the Respondent. Mr Ashley said that the Respondent had no offer to make but that a small commercial payment might be considered. It left the Claimant boxed in as there was no offer for him to respond to. As regards Mr Ashley's response to the open letter, the email is unremarkable. It merely denied the intimated claims and stated the Respondent's intention to defend any claim. One would not expect an employer to say otherwise when faced with threatened litigation. Mr Ashley went on to say that any claim by the Claimant that the Respondent had repudiated the employment contract had been waived. During their initial consultation, Ms Dury had advised the Claimant that there was no immediate breach or last straw that might obviously be relied upon by him. I do not consider that Mr Ashley's repetition of this would have made any difference, particularly given that the Claimant had already resolved not to resign his employment given the legal risks identified by Ms Dury. Mr Ashley's observations have no obvious bearing on the merits or otherwise of pursuing a Tribunal claim for alleged discrimination in the context of a continuing employment relationship.
20. Mr Ashley concluded his open response by emphasising the Respondent's commitment to the grievance process that had been instigated by the Claimant, which he said should take its natural course. There was no indication in Mr Ashley's email as to when that process would conclude, certainly no suggestion by him that it would be resolved within the following day or two such that the Claimant might sensibly be advised to 'run down the clock' on any Tribunal claim to the very last moment, specifically that any work to draft and finalise the claim and to secure an early conciliation certificate should be delayed, in case a positive grievance outcome was forthcoming by 24 September 2021. Given the Claimant's need for structure and certainty, and that a positive grievance outcome might be thought unlikely given the response to the without prejudice offer, I cannot see how delaying would have been a sensible course to pursue. In any event, any claimant or solicitor who delays the preparation and submission of a claim until the 11th hour is inviting problems. If the Respondent's without prejudice position was that it had no proposals to make, but might consider a small commercial payment, the Claimant's negotiating position would certainly not have been enhanced by delaying, particularly if his claim became indisputably time-barred in the meantime. In circumstances where the Claimant was being professionally advised, I think the Respondent would have argued, with some justification, in such circumstances that it would not be just and equitable to extend time where the claim could have been presented or potentially presented, in time. There was certainly no suggestion by Mr

Ashley that the Respondent would waive any time limitation issues if the Claimant would hold off issuing a claim whilst he awaited the outcome of the grievance process.

21. In an effort to break the immediate impasse, Ms Dury advised the Claimant to put forward a revised offer of £7,000, namely at the top of her previously advised settlement parameters. She also updated the Claimant on costs, as any further work would be outside the scope of her initial costs estimate. She also provided a cost estimate for drafting a tribunal claim and significantly, in the context of what is now said in support of the wasted costs applications, estimated that the costs of tribunal proceedings would likely be between £7,000 and £14,000 excluding representation at any final hearing. Having advised that the Claimant should settle for £7,000 she made the obvious point to him that it would be beneficial to conclude a settlement given the likely legal costs of taking the matter forward.
22. The grievance outcome was eventually provided to the Claimant on 19 November 2021. The Claimant did not withdraw his claim in light of the outcome, nor indeed following the Respondent's decision on his grievance appeal, which is surely at odds with his suggestion that had he known the Respondent was committed to the grievance process, he would not have brought a claim. In any event, regardless of Mr Ashley's email, the Claimant knew that the Respondent was committed to the grievance process because he attended a grievance hearing with Ruth Heaton and Matt Welby of the Respondent on 1 October 2021. I think it highly unlikely that the hearing had not already been arranged when on 29 September 2021 he authorised Hatch Brenner to present his claim to the employment tribunals. But even if the hearing was scheduled at very short notice after the claim had been submitted, the Claimant could easily have instructed Ms Dury to withdraw the claim if he believed the grievance process was finally moving forward and accordingly that he did not wish to continue with the claim.
23. Ms Dury evidently worked at pace in terms of submitting the claim. The Claimant instructed her to proceed at 10:30am on 27 September 2021. He wrote,

"Proceed with making the claim to tribunal please, seems Norse is just doing their usual tactic of ignoring and delaying and this leaves me with zero confidence they will not put in the remainder of the adjustments.

I have had no further updates regarding my grievance and my supervisor is not answering his phone and not gotten back to me about my pay enquiries.

To be honest I am fed up with this tiresome game they are playing."

(page 1608 of the Bundle)

24. Within two days a claim form, accompanied by 12-page Particulars of Claim, was presented to the employment tribunals.
25. The Respondent claims that Hatch Brenner issued a weak and poorly pleaded claim. I disagree. The Particulars of Claim include a detailed chronological narrative account of events and conclude with a formally pleaded set of claims. In my judgement they advanced plainly arguable grounds of complaint. I note in this regard that although the Respondent would later seek a strike out of the claim, it did not do so on the grounds that the claim had no reasonable prospect of success. I shall come back to the second claim but note for the time being that my view of the pleadings was seemingly shared by Employment Judge Craft who described the case in October 2022 as having been comprehensively pleaded by both parties.
26. I do not propose to go into detail regarding the proceedings. I am satisfied that the Claimant was appropriately advised throughout by Ms Dury. The Respondent neither agreed nor denied that the Claimant was disabled for the purposes of the Equality Act 2010. In essence, it put the Claimant to proof in the matter. Mr Davies says this was part of a conscious strategy on the Respondent's part to force the Claimant to withdraw and agree what is often referred to as a 'drop hands' settlement, that is to say that the claim would be dismissed without any admission on either side or any payment to the Claimant, on the basis that each party would be responsible for their own legal costs. Given that the Claimant had been assessed by the DWP as eligible for a Personal Independence Payment; that the Respondent's own occupational health specialist had expressed the view that the Claimant was disabled within the meaning of the Equality Act 2010; that Access to Work was involved in relation to the Claimant and had agreed to fund or contribute to the cost of relevant workplace support; that workplace adjustments had been agreed by the Respondent; and that the Claimant's claimed disability reflects neurodivergent conditions, i.e. life long conditions rather than impairments whose effects at the material time may have been uncertain, it is perhaps surprising that disability was not conceded, even if the Respondent wished to have further information to reach a view as to how the Claimant was specifically disadvantaged by reason of his conditions.
27. It may not have been apparent to Employment Judge Warren, who undertook the initial consideration of the first claim under Rule 27, that the Respondent was in possession of the information just referred to. The judge made standard directions for the preparation of a Disability Impact Statement and disclosure of any relevant medical records, redacted as appropriate. The latter direction assumed some significance in the proceedings, culminating in Employment Judge Postle's 31 May 2023 judgment on the Respondent's application to strike out the claim, in which he voiced certain criticisms of the Claimant. With respect to Employment

Judge Postle, who retired last year and was a valued colleague within this Region, I consider certain of his findings and conclusions to be unsupportable. At paragraph 17 of his written reasons, he said that on filing the second claim the Claimant had failed or refused to provide information that had been "requested". This can only be understood as a reference to paragraphs 22(b), 25(b), 28(b) and 33 of the response to the first claim, referred to in paragraph 15 of Employment Judge Postle's reasons, in which the Respondent repeatedly asserted that the Claimant had

"...given no indication of the disability(ies) relied upon in relation to this claim".

28. Having regard to paragraph 5 of the Particulars of Claim, I do not understand on what basis it might be said that the Claimant had given no indication of his disability(ies). He pleaded not just four impairments (or conditions) but also their effects upon his normal day to day activities. In my judgement it was not a want of pleading that meant the disability issue could not be resolved without a hearing, rather, at the point the second claim was presented, it was the Respondent's failure to concede disability in the face of a significant weight of evidence that supported the Claimant's claim to be disabled. Putting aside my views in the matter, in my judgement it was reasonable for Hatch Brenner to take the view that the Claimant's disability had been adequately pleaded and to advise the Claimant accordingly.
29. I also cannot agree with Employment Judge Postle's observation in paragraph 18 of his written reasons, that Employment Judge Warren had ordered the Claimant to provide precisely the information that was said by the Respondent to be missing from the pleaded claim. The order made by Employment Judge Warren on 3 March 2022 was in a standard form. It seems to me that Employment Judge Postle assumed the order was made in response to some perceived deficiency in the pleaded claim. In the absence of any documented reasons for Employment Judge Warren's order, I think it was unwise to speculate: the order was equally, if not more, consistent with disability simply having not been admitted by the Respondent.
30. It is not possible to discern what Employment Judge Postle meant when he said at paragraph 19 of his written reasons that the disability information was "inconclusive" or the respects in which the specialist records were felt to have been rendered "largely pointless" through redaction, since he did not elaborate. Employment Judge Warren's order had permitted redaction for very good reasons I need not go into. That was certainly the shared view of the Claimant and Hatch Brenner, in my judgement acting reasonably in the matter.
31. Employment Judge Postle went on to say that the Claimant had refused to provide his GP records. I think the position was significantly more

nuanced. There is extensive evidence within the bundle that the Claimant and Ms Dury were in dialogue regarding his disclosure obligations in this regard and that the Claimant had expressed the view, with increasing frustration, that the GP records would not be relevant to the disability issue. Putting aside that he and Ms Dury were both of the view that the Respondent should concede disability on the strength of the information already available to it, Hatch Brenner consistently advised the Claimant that he must comply with any orders, including by providing disclosure of any relevant medical records.

32. Employment Judge Postle also said that Hatch Brenner had threatened the Respondent with a wasted costs order. I respectfully disagree. When one reads the correspondence it is clear, and I think would have been apparent to the Respondent or certainly to Mr Ashley that, as many solicitors do, when Hatch Brenner referred to wasted costs they were merely putting the Respondent on notice that its ongoing failure to concede disability was unreasonable given the information / evidence that was available to it. I can discern no assertions of unreasonable or negligent or improper conduct on the part of Paladin, or that their correspondence might reasonably have been understood in that way.
33. At paragraph 20 of his written reasons, Employment Judge Postle said that he had made a further case management order,

“... once again requiring the Claimant to provide the information ordered by Employment Judge Warren”.

The order he was referring to was a case management order following initial consideration of the second claim. I do not presume to second guess what was in Employment Judge Postle’s mind when he made the order that he did in the second claim. However, his handwritten record of the initial consideration does not indicate that the case file for the first claim was referred to him at the same time. The claims had not then been consolidated and there was no direction by Employment Judge Postle that consideration would be given to consolidating the claims.

34. Employment Judge Postle went on to say at paragraph 21 of his written reasons that the Claimant had continued to fail or refuse to comply with his orders, without identifying the respects in which the Claimant was said to be in default. Be that as it may, if he was referring to the order for disclosure of relevant medical records, in my judgement Hatch Brenner had no reason to believe that the Claimant was in default as he had consistently instructed them that there was no relevant information regarding his neurodiversity within his GP records because he had been privately assessed in that regard.
35. Employment Judge Postle also said that at a hearing on 4 October 2022 Employment Judge Craft had,

“... ordered the Claimant “yet again” to provide disclosure.”

36. I agree with Mr Davies that in fact what Employment Judge Craft ordered on that occasion was for the Claimant to provide unredacted copies of his previously disclosed records. I refer to paragraph 3.1 of his case management order (page 608 of the bundle). The Claimant complied with that order. There was no order for additional disclosure of the Claimant's GP records, in redacted or unredacted form, beyond the original standard case management order which the Claimant and Ms Dury reasonably believed he had complied with.
37. In concluding, Employment Judge Postle said that the Claimant had come close to having his claim struck out because of his alleged failure / delay in producing his GP records. He expressed the further view that the situation had not been helped by Hatch Brenner. Putting aside that he did not clearly identify in what respects they had not helped the situation, when he made these observations he did not, as I do, have the benefit of having sight of Hatch Brenner's case file which paints a very different picture to that suggested by the Claimant and Respondent, not only in terms of the two specific solicitors' conduct of the proceedings but as regards the Claimant's commitment to comply with the Tribunal's orders, including his frustration with what he described as the Respondent "gaslighting" him by continuing not to concede disability.
38. Employment Judge Postle would not have been aware of this when he criticised the Claimant and Hatch Brenner, and said that a hearing to determine disability was only necessary because the Claimant was in default, but on 20 December 2022, Paladin put forward settlement proposals on behalf of the Respondent in which they said,
- "Your client will continue to be recognised as disabled by reason of the combination of his ADHD, Autism and Dyslexia and will continue to be entitled to reasonable adjustments in respect thereof."
- [my emphasis]
- (page 1925 of the Bundle)
39. I think Employment Judge Postle would have been surprised, even concerned, to learn that disability had been conceded five months earlier under the cloak of without prejudice correspondence and, seemingly, not for the first time if the Claimant was to *continue* to be recognised as disabled. The email serves to reinforce what the Claimant and Hatch Brenner had been saying consistently regarding the Respondent's unreasonable failure to concede disability.
40. As an aside, I feel bound to observe that the offer itself was framed in terms that I do not consider appropriate. The tone was counter productive, indeed needlessly aggressive, and in my judgement unreasonably threatened the Claimant with legal costs of £15,000, asserting that it was a "virtual certainty" that Employment Judge Postle would make a costs order

against the Claimant even if he did not strike out the claim. In a further section headed, "Your firm's professional conduct" the Claimant's vulnerability, including his impaired ability to understand and process information was highlighted. Notwithstanding these observations and the trenchant criticisms of Hatch Brenner that followed, including that in continuing to represent the Claimant they might secure an unfair and improper advantage over him, and that this was unconscionable, the Respondent gave the Claimant just three days to accept their settlement proposals and conclude a COT3 Agreement. The deadline was 4pm on Friday 23 December 2022 when most businesses would in fact have been closed for Christmas. In my judgement it was the Respondent's approach to settlement and to the disability issue that was unconscionable.

41. Turning to the Scott schedule:

Item 3

42. I have said that the first claim was not weak or poorly pleaded. It was certainly not issued, as claimed, without the Claimant's instructions.
43. Aspects of the second claim were more problematic, as Mr Davies acknowledges. However, a solicitor does not act unreasonably, negligibly or improperly in representing a client on a weak claim as long as they advise their client as to their prospects of success and provide regular updates on merits, risks and costs. Hatch Brenner did all three.
44. The Claimant was entitled to name Mr Wilby as a respondent and neither he nor Hatch Brenner acted unreasonably in naming Norse Eastern Limited as a further respondent given the confusion caused by the issue of a contract to the Claimant identifying that company as his employer.
45. Even if the sixth pleaded detriment at paragraph 32.1.6 of the Particulars of Claim in the second claim was weak, that does not of itself support the making of a wasted costs order. In any event, I cannot see that it caused either the Claimant or the Respondent to incur wasted costs. It was a minor item in a larger claim.

Item 4

46. My detailed review of the case file and the correspondence between the solicitors does not support that Hatch Brenner were writing lengthy and unnecessary correspondence arguing misconceived points. On the contrary, I consider the firm's conduct of the litigation to have been in accordance with their duties as Officers of the Court, their professional obligations to the Claimant, and in the spirit of the overriding objective. Their focus throughout was to secure a concession from the Respondent that the Claimant was disabled, failing which the conversion of the case management preliminary hearing originally scheduled for August 2022 to a public preliminary hearing to determine the disability issue. Once they secured a concession or determination in the Claimant's favour, they were

willing to consider taking the case forward under a damages-based agreement with a view to securing a settlement for the Claimant. Again, this was an entirely proper, reasonably advised course of action.

Item 5

47. I have already dealt with the second claim. Employment Judge Postle did not determine that the claim was vexatious or abusive. There are no grounds upon which I would reach that conclusion. The second claim was considered and reflected the Claimant's specific, documented instructions. There can be no suggestion that it was brought simply in order to harass the Respondent or with some other improper motive. Nor was it irrelevant or abusive to the Respondent. The criticisms are misplaced.

Item 6

48. I am not persuaded that without prejudice privilege was abused, certainly not on the part of the Claimant. It is not in any event clear what is being referred to since the pleaded narrative background made no reference to without prejudice correspondence between legal representatives. The second claim could equally have been referring to Paladin's open communication of 21 September 2021.

Items 7, 8 and 9

49. I have dealt with the orders in some detail. There are no grounds to impugn Hatch Brenner's conduct. For the reasons I have already given, I do not consider Employment Judge Postle's judgment in the matter to be persuasive and do not adopt his findings or conclusions, including those at paragraphs 24 and 25 of his written reasons in which he seems to suggest that Hatch Brenner (specifically Mr Judkins who had recently taken on conduct of the case) had adopted an essentially cavalier attitude to the Claimant's compliance with the Tribunal's orders. He went as far as to say that Mr Judkins was suggesting that,

“... the Respondent should just concede the issue of disability without any medical evidence, Specialist, GP Records or otherwise for the Respondents to base such a decision on.” (page 884)

50. Whilst these observations overlook that evidence had already been disclosed to the Respondent, in any event far from taking a cavalier approach, Mr Judkins was advocating a proportionate approach. He and Ms Dury were vindicated by the concession that was offered just a few weeks later. Yet some months later the Respondent would pursue strike out because of the Claimant's alleged failure to provide information and disclosure on an issue the Respondent had been prepared to concede (and indeed, could be said to have conceded), but only if the Claimant withdrew his claim. I do not consider it was proper for the Respondent to link the two matters. Employment Judge Postle's criticisms of Mr Judkins

further overlook both his and Ms Dury's correspondence with the Claimant's GP at pages 595 – 597 of the Bundle.

51. Mr Judkins wrote to Dr Stubbs on 4 November 2022 as follows:

"Thank you for your letter of 17 October 2022, and we are grateful for the information contained in particular relating to our client's medications.

However, we did request the forwarding to ourselves of full GP notes and records, which will include information and letters received from the external agencies to which you refer.

In fact, there is an Order made within the Employment Tribunal for the production to solicitors acting for our client's employer, of the full and unredacted surgery records. That Order is intended to include disclosure of the external documents in question, and by which our client's current conditions were investigated and diagnosed.

We also consider that the letter of consent as provided and signed by our client, provides authorisation for the forwarding and disclosure of all records and documents which relate to him, as are held by the surgery.

Accordingly, we shall be pleased if you would kindly reconsider the request with the need to forwarding to us the entirety of the documents so held."

(page 595 of the bundle)

Item 10

52. As does Mr Davies, I have some difficulty in understanding why there is or was said to be an own interest conflict. In Paladin's without prejudice save as to costs email of 20 December 2022, which I doubt extended to the section headed "Your firm's professional conduct" (starting at page 1925 of the bundle), it was said that Hatch Brenner had acted, at best, negligently or unreasonably in the prosecution of the case from its inception. By this judgment I conclude otherwise. They had not, as alleged, allowed the Claimant to flagrantly breach three consecutive orders for disclosure and placed the Claimant at risk of strike out. An own interest conflict had not developed and there were no reasonable grounds for Hatch Brenner to conclude that there was such a conflict or risk of a conflict. Paladin's email did not provide them with such grounds. Amongst other things, I do not understand on what grounds the Respondent felt able to venture that Hatch Brenner were failing to advise the Claimant properly or at all, or that the case was being advanced without the Claimant's full understanding and instructions. In my judgement the Respondent was trespassing upon the solicitor and client relationship, possibly deliberately so. In particular,

there was no basis whatever for the Respondent to infer that Hatch Brenner were “doubling down” and continuing to spend more of the Claimant’s money resisting an indefensible position.

Item 11

53. I reject without hesitation any suggestion that the Claimant was misled regarding either the value or the merits of his claim, both of which were kept regularly under review and communicated to him. There is a difference between how a claim may be valued in a Schedule of Loss and for settlement purposes, and I am satisfied this was explained to the Claimant. It was his decision at the pre-action stage to try to secure a settlement at a significantly higher level than that which Ms Dury had advised.

Item 12

54. Likewise, I do not accept that material information was withheld from the Claimant which might have enabled him to make informed decisions and give appropriate instructions. The case file evidences a high level of interactions with the Claimant, that the advice was clear and consistent, and that the Claimant understood that advice and persisted with his claim in the full knowledge of the costs that were continuing to be incurred.

Item 13

55. Hatch Brenner did not mislead the Tribunal. It is a particularly serious allegation yet has not been substantiated in any meaningful way. Mr Judkins was transparent as to the efforts that had been made to secure the Claimant’s GP records. The Claimant himself acknowledged at Tribunal the difficulties that had arisen, which he attributed to changes of GP as well as delays by at least one of the three GP practices. He also acknowledged his own resistance to providing his GP records which he considered to be irrelevant and to contain sensitive personal and family information that he did understandably did not wish to share.

Item 14

56. The Claimant complains that Hatch Brenner misled the Tribunal as to his position regarding postponement of the five-day final hearing which was listed to commence on 25 August 2023. It is difficult for me to ascertain whether Hatch Brenner’s email of 20 June 2023 (at page 1202 of the bundle) was written on instructions. In the time available, I have been unable to undertake a further detailed review of the bundle to establish what, if any, attendance notes exist that might evidence whether the Claimant’s instructions changed after April that year when he was of the view that the final hearing should be postponed. If I proceed on the basis that the email was written without the Claimant’s instructions, there is no indication that this gave rise to wasted costs, except perhaps the costs, if

any, of writing that small part of the email which addressed the matter. No steps were taken to prepare the case for final hearing.

Item 15

57. In my judgement there was no breach of professional conduct, generally or specifically and, as I have already made clear, I reject any suggestion that Hatch Brenner took advantage of the Claimant to rack up fees.
58. The wasted costs applications are refused.

Approved by:

Employment Judge Tynan

Date: 3 March 2026

Sent to the parties on: 16 April 2026.....

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For the Tribunal Office.

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