EMPLOYMENT TRIBUNALS

Claimant: Cassandra Green

Respondent: Olives Solicitors Limited

Heard at: London South (in chambers) On **26 March 2026**

Before: Employment Judge N Wilson
G Anderson (non legal member)
C Rogers (non legal member)

COSTS JUDGMENT

The claimant's application for costs is refused.

REASONS

1. The claimant makes a costs application dated 26 November 2025 following the final hearing which took place on 24,25,26,27 November 2025.

2. The respondent has filed a response to the application dated 27 November 2025.

3. The costs application was deferred to be dealt with after the remedy hearing listed to take place on 25 March 2026. Whilst the remedy hearing was adjourned, we consider the matter can be dealt with appropriately on the papers without a hearing. The parties agreed to the application being determined on the papers at the final hearing in any event.

4. The claimant's application refers to Rule 74(a) and 74 (b) but I assume based on the nature of the application it is in fact made under Rule 74 (2) (a) and (b).

5. The basis of the costs order being sought is 'no reasonable prospects of success' and 'unreasonable conduct'. This is specifically in relation to the respondent maintaining that the claimant was not an employee of the respondent throughout the proceedings until conceding the point on the first day of the final hearing.

6. Rule 74(2) provides that: "a 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; or (b) any claim, response or reply had no reasonable prospect of success.

7. Under Rule 76(1) a costs order may – (a) order the paying party to pay the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party; (b) order the paying party to pay the receiving party the whole or a specified part of the costs of the receiving party, with the amount to be paid being determined, 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 an Employment Judge applying the same principles …"

8. Under Rule 82, in deciding whether to make a costs, preparation time, or wasted costs order, and if so in what amount, the Tribunal may have regard to the paying party's (or, where a wasted costs order is made, the representative's) ability to pay.

9. Under Rule 74 (2) (a) therefore the tribunal must find that a party (or their representative) has acted ***'****vexatiously, abusively, disruptively or otherwise unreasonably'.*

10. Under Rule 74 (2) (b) the tribunal must decide whether or not the claim had reasonable prospects of success.

The Relevant Legal Principles

11. The correct starting position is that an award of costs is the exception rather than the rule. As Sedley LJ stated at para 35 of his judgment in ***Gee v Shell Ltd [2003] IRLR*** "It is nevertheless a very important feature of the employment jurisdiction that it is designed to be accessible to people without the need of lawyers, and that in sharp distinction from ordinary litigation in the UK, losing does not ordinarily mean paying the other side's costs …" Nonetheless the

Employment Tribunal has a wide discretion where an application for costs is made under Rule 76(1)(a). As per Mummery LJ at para 41 in ***Barnsley BC v Yerrakalva [2012] IRLR 78 CA*** "The vital point in exercising the discretion to order costs is to look at the whole picture of what happened in the case and to ask whether there has been unreasonable conduct by the claimant in conducting the case and, in doing so, to identify the conduct, what was unreasonable about it, and what effects it had." However, the Tribunal should look at the matter in the round rather than dissecting various parts of the claim and the costs application and compartmentalising it. There is no need for the tribunal to find a causative link between the costs incurred by the party making the application for costs and the event or events that are found to be unreasonable, see ***McPherson v BNP Paribas***, and also ***Kapoor v Governing Body of Barnhill Community High School*** in which Singh J held that the receiving party does not have to prove that any specific unreasonable conduct by the paying party caused any particular costs to be incurred.

12. When considering an application for costs the Tribunal should have regard to the two-stage process outlined in ***Monaghan v Close Thornton*** by Lindsay J at paragraph 22: "Is the cost threshold triggered, e.g. was the conduct of the party against whom costs is sought unreasonable? And if so, ought the Tribunal to exercise its discretion in favour of the receiving party, having regard to all the circumstances?"

13. The Tribunal Rules under Rule 74 (2) (a) impose a three-stage test: first, the tribunal must ask itself whether a party's conduct falls within rule 74(2)(a) — in other words, is its costs jurisdiction engaged?; if so, secondly, it must go on to ask itself whether it is appropriate to exercise its discretion in favour of awarding costs against that party. The third stage is the determination of the amount of any award.

14. In ***Brooks v Nottingham University Hospitals NHS Trust [*2019] WLUK 271, UKEAT/0246/18** the EAT confirmed that dealing with an application for costs requires a two-stage process. The first is whether in all the circumstances the claimant has conducted the proceedings unreasonably. If so, the second stage is to ask whether the tribunal should exercise its discretion in favour of the claiming party, having regard to all the circumstances.

15. If a tribunal considers that there has been a marked failure by a highly experienced legal practitioner to apply the standard of judgement and legal expertise expected of such a person when representing a party in tribunal proceedings, this may expose the party concerned to an order for costs on the basis that the legal representative's conduct is 'otherwise unreasonable' within the terms of rule 74(2)(a).

16. A tribunal may also make a costs order against a party who has acted abusively or disruptively in bringing or conducting proceedings (or his or her representative has done so).

17. A costs order may also be awarded against a party under rule 74(2)(a) where the party (or his or her representative) has acted unreasonably in bringing or conducting proceedings. 'Unreasonable' has its ordinary English meaning and is not to be interpreted as if it means something similar to 'vexatious' ***— Dyer v Secretary of State for Employment EAT 183/83***. It will often be the case, however, that a tribunal will find a party's conduct to be both vexatious and unreasonable. In determining whether to make an order under this ground, a tribunal should take into account the 'nature, gravity and effect' of a party's unreasonable conduct — ***McPherson v BNP Paribas (London Branch) 2004 ICR 1398, CA***

18. The Court of Appeal in ***Yerrakalva v Barnsley Metropolitan Borough Council and anor 2012 ICR 420, CA*** commented that it was important not to lose sight of the totality of the circumstances. The vital point in exercising the discretion to order costs (or a PTO) is to look at the whole picture. The tribunal has to ask whether there has been unreasonable conduct by the paying party in bringing, defending or conducting the case and, in doing so, identify the conduct, what was unreasonable about it, and what effect it had.

19. Under Rule 74 (2) (b) the key question to ask when deciding on 'having no reasonable prospects of success' is not whether a party thought he or she was in the right, but whether he or she had reasonable grounds for doing so. ***(Scott v Inland Revenue Commissioners 2004 ICR 1410 CA).*** The tribunal is therefore required to assess objectively whether the claim had any prospect of success at any time of its existence.

20. The fact that a party in question is a litigant in person may well be a factor that is taken into account by a tribunal when exercising its discretion to award costs.

21. With regard to the paying party's ability to pay, Rule 82 allows the tribunal to have regard to the paying party's ability to pay, but it does not have to, see ***Jilley v Birmingham and Solihull Mental Health NHS Trust [2008] UKEAT/0584/06*** and ***Single Homeless Project v Abu [2013] UKEAT/0519/12***. The fact that a party's ability to pay is limited, does not, however, require the tribunal to assess a sum that is confined to an amount that he or she could pay- see ***Arrowsmith v Nottingham Trent University [2011] ICR 159 CA; AQ Ltd v Holden [2012] IRLR 648*** where the EAT upheld a costs order against a claimant of very limited means and per Rimer LJ "her circumstances may well improve and no doubt she hopes that they will." One reason for not taking means into account is the failure of the paying party to provide sufficient and/or credible evidence of his or her means.

22. VAT should not be included in a claim for costs if the receiving party is able to recover the VAT, see ***Raggett v John Lewis plc*** which reflects the CPR Costs Practice Direction (44PD).

Conclusion

23. The claimant is legally represented. The respondent is a firm of solicitors. Mr Ogonfolu, a qualified solicitor (and the respondent's managing director) represented them throughout. Whilst Mr Ogonfolu is not an Employment lawyer, he ought to have a sufficient degree of legal knowledge to assist him navigate not only the process but also to have some understanding about litigation and the burden of proof provisions. It ought to be evident that where a party advances a claim or a defence to a claim they should assess whether they have reasonable grounds for doing so.

24. The claimant is legally represented. The claimant's solicitors rely on the following grounds to make the application.

1. No reasonable prospects of success

The Respondent acted unreasonably in maintaining the argument that the Claimant was not an employee all the way to the first day of the final hearing in this matter, and that this ground of defence had no reasonable prospects of success.

2. Unreasonable conduct

The Respondent having already conceded this point before the Tribunal at a preliminary hearing then continued running this hopeless argument even in his witness statement for this hearing. As legally qualified person this was unreasonable conduct and wasted everyone's time, including that of the Tribunal. Preparation time and effort was put into preparing to deal with this defence that stood no chance of success.

25. The claimant's solicitors do not set out what costs/the level of costs they are seeking as part of the application.

26. Insofar as the unreasonable conduct is concerned, we find given Mr Ogonfolu is a qualified solicitor who was the training principle for the claimant in a law firm where he registered her as a trainee solicitor with the SRA it is evident he ought to have understood she was clearly an employee. Whilst he refers to the way he had engaged her (verbally) and agreed to pay her (on a percentage fee arrangement) making employment status complex we do not find this to be the case. She was clearly an employee as a trainee solicitor, and he was registered

as a training principle pursuant to which he ought to have been training her and ensuring she fulfilled the criteria under the contract to qualify as a solicitor. Flexible working patterns or the basis of remuneration agreed between them ought not to have distracted from the true nature of the working relationship. In any event whilst the respondent argues his assertion was based on a genuine analysis of the working relationship there are no reasonable grounds disclosed for believing this to be the case particularly given the nature of a training contract between a trainee solicitor and a law firm. He also does not stipulate why in those circumstances he conceded the point at the final hearing.

27. Despite the respondent having been informed by EJ Aspinall at a preliminary hearing on 16 April 2025 that he had clear concerns about how a trainee solicitor could be self employed, the respondent maintained this issue as a live one until the first day of the final hearing. Mr Ogonfolu argues that employment status issues are complex (we agree they can be) but where an Employment Judge raises clear concerns about this at a preliminary hearing it ought to have been abundantly clear the respondent was in difficulty with this defence. At the very least it ought to have alerted him to address his mind to employment status and whether it should in fact be conceded before the final hearing.

28. We have considered the nature gravity and effect of the alleged conduct and find on balance it does engage Rule 74.

29. Having considered the nature of the employment status issue advanced by the respondent we turn to considering whether he had any prospects of success at any time of its existence. We find on balance it did not. The respondent had employed the claimant as a trainee solicitor registering her as a trainee with a training principle. Flexible working arrangements and/or a fee-based remuneration package does not detract from the true nature of the employment relationship when considering the nature and purpose of a training contract. Furthermore, the work the claimant was engaged to do was under the direct instruction and supervision of a training principle (and crucially no one else could be substituted by her to fulfil the training contract). We find given the claimant was employed under a training contract registered with the SRA and was training to be a solicitor the respondent had no prospects of success with disputing the claimant employment status. There were no reasonable grounds for the respondent holding this belief.

30. For these reasons we find Rule 74 is engaged. The first stage of the test for awarding costs under Rule 74 (2) (a) and (b) is accordingly met.

31. It is vital to look at the whole picture of what happened in this case. The issues around the claimant's engagement, the way in which remuneration was agreed

and the work that she carried out all formed part of the evidential background for her claims in any event. Some of those matters were directly relevant to the remaining issues in the case in any event (in particular her breach of contract, wrongful dismissal and unauthorised deductions claims). The evidence provided by the parties which was relevant to the issue of employment status was therefore substantially mirrored /relevant to these other claims in any event which we still had to make findings of fact about. In the circumstances in terms of the effect of not conceding the employment status issue, we stand back and find on balance it did not substantially adversely impact the final hearing nor on balance the parties conduct of the litigation given much of the evidence still remained relevant as either the wider evidential background or directly to issues in other complaints which proceeded. Having considered this, we conclude it is not appropriate in the circumstances of this case to exercise our discretion in favour of awarding costs against the claimant.

32. Accordingly, the claimant's application for costs is refused.

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Employment Judge N Wilson
Dated: 26 March 2026