EMPLOYMENT TRIBUNALS

Claimant: Miss E Obi

Respondent: Aneurin Bevan University Local Health Board (ABUHB)

Heard at: Wales (in public) **On:** 20 April 2026 and 21 April 2026 (in chambers).

Before: Employment Judge Shotter

REPRESENTATION:

Claimant: Mr D Stephenson, counsel

Respondent: Ms J Williams, counsel

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The claimant had acted vexatiously and unreasonably in the way that proceedings have been conducted under rule 74 and 76 of the Employment Tribunal Rules of Procedure 2024.

2. The hearing is adjourned to a second public preliminary hearing with an estimated length of 3-hours before Employment Judge Shotter to

be held by video, to consider stage 2, should any award of costs be made, and stage 3, quantum.

REASONS

Preamble

1. This is a cost hearing following the claimant withdrawing her claims on the 20 October 2025, two weeks before the final hearing listed for fifteen days. The respondent's cost application is made under Rule 74 of the Employment Tribunal Procedure Rules 2024.

2. I considered the documentation referred to within the respondent's 1109 page Costs Hearing Bundle, which had not been agreed, the claimant's Index and 188 page bundle attached to a document titled *"The Claimant's Response to the Respondent's Application for Costs,"* the claimant's undated statement of means and eight attachments, a chronology produced by the respondent (not agreed), a bundle of the witness statements for the liability hearing and Mr Stephenson's Skeleton Argument.

3. I also have before me a copy of the amended ET1A form provided to the Tribunal today by the claimant with an email explaining the amendments, which was not copied by the claimant to the respondent or Mr Williams and instead, I arranged for it to be copied.

The respondent's application

4. On the 5 September 2025 the respondent has made an application that the claimant is ordered to pay costs totalling £148,114.29 excluding VAT apart from counsel's fees of £28,740.00 on which VAT has been paid. The claimant has taken an exception to this application and a response to the application was provided on the 3 March 2026.

5. I have considered oral closing submissions of the parties and the references to case law submitted on behalf of both parties, for which I am grateful as the law relating to costs is clearly set out and not disputed.

6. The grounds relied upon by the respondent are set out in an application dated 5 December 2025, paraphrased as follows; that the claimant had acted vexatiously, abusively, disruptively or otherwise unreasonably in

the bringing of the proceedings, or part of it, or the way that the proceedings, or part of it, have been conducted (r74(2)(a)); and/or that the claims, or some of them, had no reasonable prospect of success (r74(2)(b)). In support of its contentions, the Respondent relied on:

- lack of prospects; and/or
- failure to accept the R’s offer of settlement; and/or
- the claimant’s approach to the litigation generally, and
- the Claimant’s approach to preparation for the final hearing.

7. Both parties invited me to deal with this cost application in three parts reflecting the case law:

    1. The threshold stage - whether the Claimant’s conduct falls within rule 74(2)(a) and (b).

    2. The discretion stage - whether it is appropriate to exercise its discretion in favour of awarding costs against the claimant taking into account all the circumstances of the case, and

    3. The award stage – determining the amount of award.

8. I have dealt with the threshold stage today, and reserved Judgment as a result of finishing oral submissions by late afternoon still to read a substantial number of documents to which I have been referred. It was agreed if the respondent succeeds in meeting the burden at this stage, the next step will be to reconvene the hearing and hear evidence dealing with part 2 and 3 including evidence from the claimant as to means.

9. Ms Williams confirmed at the hearing the respondent will no longer be relying on its argument that the claim had no reasonable prospects of success. The respondent’s application centred around the following arguments around the claimant’s alleged vexatious and/or unreasonable conduct:

    1. The overly detailed list of issues advanced by the Claimant (which took over 7 months to finalise by agreement with the Respondent).

2. her unwillingness to take a pragmatic approach to issues which were remarkably similar but repeated as separate heads of claim.

3. her continued unwillingness to follow guidance from different Judges so to reduce the issues at preliminary hearings (there were five in total before the final hearing) and obtain legal advice, despite being encouraged to do so during the course of those preliminary hearings.

4. The above points together and the withdrawal of her claim only two weeks before the final hearing which had ultimately been listed for 15 days having been postponed twice (due to the Claimant expanding the issues) only serves to reinforce the Claimant's vexatious and unreasonable conduct in bringing the proceedings.

10. I intend to deal with each point separately and cumulative.

<u>The history of this litigation.</u>

11. This litigation has a long and protracted history. The ET1 was date stamped by the Tribunal as being presented on 12 November 2024. The claimant brought complaints of race discrimination under section 13, 26 and 27 of the Equality Act 2010 (*"the EQA"*). She was a litigant in person throughout the course of the hearing, and instructed Mr Stephenson later in 2025 on direct access.

12. ACAS early conciliation took place between 12 March and 23 April 2024.

13. The first ET1 was presented on the 22 May 2024. There is no record on the Tribunal filing system that the claimant issued a second ET1 at any date. However, it appears that on the 22 July 2024 the claimant submitted an application to amend attaching a new ET1 Claim form which substantially amended her claim. This is referred to as *"ET1A."* Leave to amend was granted without a hearing on the 5 September 2024.

<u>20 September 2024 first preliminary hearing</u>

14. On the 20 September 2024 a preliminary hearing took place during which the final hearing was listed for 8-days starting on the 17 March 2025 as the original three-day listing for 9 to 12 December 2024 was insufficient. The usual case management orders were made including exchange of documents and copies on 21 October 2024 and a list of issues was produced. Ms Williams made reference to the claimant making an application for discovery before the 20 September 2024 preliminary hearing took place. I found that this was relevant to the costs application in that it reflects the claimant's awareness of the Tribunal rules and document disclosure early on in these proceedings. The claimant was aware of her obligation to disclose documents in compliance with case management orders and not leave it last minute.

15. As at the 20 September 2024 at the very latest, the claimant was aware of the obligation on her to disclose documents in the case by 21 October 2024. The claimant failed to comply with this case management order (see below).

16. On the 12 November 2024 the claimant made an application for specific disclosure referring to the respondent providing blank documents and heavily redacted documents.

<u>16 January 2025 second preliminary hearing</u>

17. On the 16 January 2025 a second preliminary hearing took place before a different judge who vacated the three-day final hearing and listed the claimant's application to exclude material relating to the fraud allegations and a dispute between the parties as to relevance of documents in the final hearing bundle.

18. The list of issues and 16 comparators relied on by the claimant was discussed, and the claimant agreed to clarify which act related to a specific comparator. Ms Williams raised the issue of the similar allegations in the section 13 and 26 claims with differences in wording and the respondent wanted the language mirrored. The Judge recorded at para 5.2 that whilst it would be helpful she was not prepared to force the claimant to do so recording *"the relationship between the parties currently seems to be fractured and needs to be rebuilt to help with getting this case ready for final hearing, and it was not an exercise I considered would help with that rebuilding."* Ms Williams criticised the claimant in this costs application for acting unreasonably by not

mirroring the two different claims. I agreed, concluding on the face of it the claimant was intentionally ignoring the overriding objective and the judge's indication.

19. At the 16 January 2025 preliminary hearing the format of the job plans was discussed and agreed in addition to disclosure issues relating to the claimant's subject access request (*"SAR"*) and the claimant was given guidance on how to make an application for specific discovery referencing relevance to the list of issues. At paragraph 24 the judge recorded *"The parties should seek to resolve their disputes between them. Much of what is laid out above in relation to specific disclosure the parties could have resolved between themselves if they were able to communicate better, listen to each other's point of view, reflect, and be prepared to think about pragmatic solutions. They are under a duty under the Tribunal Rules to co-operate with each other. The tribunal cannot micromanage every dispute between them in the proceedings; that is not a fair allocation of resources in our busy tribunal system where the majority of claimants are like the claimant also unrepresented."* It is clear from the Tribunal file and papers before me that the claimant ignored her duty to comply with the overriding objective, and the respondent was left firefighting to keep the litigation on track.

20. It was at the 16 January 2025 preliminary hearing the claimant applied to exclude material the respondent sought to rely on relating to a fraud allegation. This is relevant to the application I heard later in the chronology, when the claimant acted unreasonably.

Claimant's second application to amend

21. The claimant applied to amend her claim on the 11 February 2025 to include a further allegation brought under section 26 of the Equality Act 2010 (*"the EQA"*) from an alleged incident on 16 October 2024.

The third preliminary hearing held on the 14 February 2025

22. A preliminary hearing took place on the 14 February 2025 resulting in case management orders sent to the parties on the 19 February 2025 dealing with the 15-day final hearing with seventeen witnesses, an agreed bundle of 2,250 pages and recording that the claimant had sent

a further 290 pages to the respondent. The additional 290 pages were sent approximately 5 months after the claimant was ordered to disclose documents. Not all the documents disclosed were found relevant, and it was unreasonable for the claimant to send 290 documents to the respondent where relevance was in question over a number of them.

23. Both parties were objecting to various documents being included on the grounds of relevance. At para. 18.3 the judge recorded *"It is not in the interests of justice nor consistent with the overriding objective (per r.3 of the Rules) for there to be protracted arguments and disagreements over the preparation of this case for trial. As has been recorded previously by the Tribunal, the relationship between the parties is fractured and needs to be rebuilt (not least because they have an ongoing employment relationship)."*

24. The judge dealt with the relevance of various documents in detail and accepted a number of documents as potentially relevant in favour of the claimant's application. The claimant's application to exclude the counter-fraud documents did not succeed and in relation to miscellaneous documents the judge recorded at para.29 *"To the Claimant's credit, she agreed on reflection that some, but not all, of the Miscellaneous Documents were potentially relevant to the issues in the case…the parties have made progress since the last hearing in January 2025, which is to be commended. It is a reflection of their ability to work co-operatively in preparing the case for trial. That co-operation is expected to continue."*

25. In an Order sent to the parties on the 17 February 2025 case management orders were made dealing with the claimant's 11 February 2025 application to amend and a list of issues.

<u>25 March 2025 application by claimant for specific disclosure.</u>

26. The claimant made an application for specific disclosure on 23 March 2025 relating to a counter-fraud investigation which was refused on the 11 April 2024 (see below) less than 6 weeks after the preliminary hearing when the claimant's application to exclude counter-fraud documents was excluded. I find that this was unreasonable behaviour on two grounds; the first is that the claimant should not have objected to the counter-fraud documents relied on by the respondent if she

wanted to refer to them or deemed the documents relevant, which she clearly did hence the specific discovery application. Secondly, it was open to the claimant to raise the issue of specific discovery at the 14 February 2024 preliminary hearing and she did not. The result of the claimant's unreasonable behaviour was a fourth preliminary hearing. In arriving at this finding that the claimant behaved unreasonably, I have taken into account the claimant's early knowledge of disclosure, the case management orders and whilst ongoing disclosure of documents can and does take place during the litigation, it is unusual for 290 pages of documents to be disclosed when a number are not relevant, and the effect of this was to put further pressure on the respondent in terms of time and cost.

27. The parties were sent a notice of hearing on the 25 March 2025 informing them of the 15-day final hearing starting on 3 November 2025.

28. On the 8 April 2025 the claimant lodged a draft agenda, draft List of Issues and proposed amendments to the List of Issues dealing with allegations against one of her colleagues.

<u>11 April 2025 fourth preliminary hearing</u>

29. At a preliminary hearing held on the 11 April 2025 following the claimant's application of 23 March 2025 for an order for specific disclosure of documents regarding any counter-fraud allegations and investigations pertaining to one of her colleagues, her application was refused and a case management order was made in respect of the job plans for the claimant's comparators. The claimant's application to amend the list of issues was allowed and the list of issues agreed was set out in the appendix. Various case management orders were made including exchange of witness statements on the 9 September 2025, in approximately 5 months' time with the final hearing due to take place in approximately 7 months' time.

30. The Respondent was ordered to disclose to the Claimant the relevant job plans, (that is the job plans in respect of the Claimant's comparators, that cover the period from September 2022 to December 2023) in its possession, including any provisional job plans, where the terms of final job plan which succeeded it were materially different.

<u>The claimant's application for the recusal of a judge.</u>

31. On the 12 April 2025 the claimant requested the recusal of the employment judge who heard the preliminary hearing on 11 April 2025 on the basis that she did not like his attitude to her, the decisions made and he was biased, even though orders were partly in her favour.

32. The claimant's application was rejected by the Regional Employment Judge on the 8 May 2025. It apparent from the claimant's communication that she did not like to be challenged and believed she knew best when it came to the litigation. The claimant's aggressive and generally unhelpful attitude has characterised this litigation from the outset, especially when it came to the claimant's dealings with the respondent, despite the claimant not taking up suggestions made by various judges that she took legal advice on her claims.

33. In an email sent to the tribunal on the 9 May 2025 the claimant made a number of criticisms of the judge who took part in the 11 April 2025 preliminary hearing, picking through the Orders, indicating she intended to appeal, requested the Tribunal deal with unresolved disclosure issues, disagreeing with the List of Issues in connection with a course of conduct amongst a number of other matters. The claimant did not appeal.

34. On the 23 May 2025 there were various communications between the parties regarding the job plans to which I was taken in the bundle.

35. In an email sent to the claimant on 23 May 2025 the claimant was sent the job plans that were in existence.

<u>Claimant's third application to amend her claim on 28 June 2025</u>

36. The claimant applied to amend her claim a third time on the 28 June 2025 to bring in new claims in the knowledge that various case management orders had been made leading to a trial in approximately less than 4 months away. The claimant's third application to amend was unreasonable and vexatious in the circumstances, given the number of previous amendment applications she had made, case management hearings that had taken place in which her claims and the issues were

discussed and agreed, and the likely prospect of the trial being de-railed with a lengthy delay resulting.

Claimant's disclosure of 1,000 documents.

37. On the 6 July 2025 the claimant provided further disclosures totalling 1000 documents and 10 videos. Some of the evidence could not be seen until 8 July 2025. It is clear the claimant did not accept the respondent had disclosed all of the job plans and on the 22 July 2025 and made an application to the Tribunal alleging the respondent was in breach of the order regarding job plans.

38. The claimant sent the 1000 documents and 10 videos on the date the respondent and claimant were to agree the documents bundle, with a view to the respondent preparing a file of those documents on the 18 July 2025. The claimant was aware of this date, and the earlier date of 24 November 2024 for preparation of the trial bundle, which had been varied. She had agreed to it at the 11 April 2025 preliminary hearing when her case was discussed generally, with specify reference to the outstanding list of issues. When the claimant acted as she did on the 6 July 2025 she was also aware (having agreed the case management order) that witnesses' statements were to be exchanged on the 9 September 2025, and the parties confirm no later than 21 October 2025 that the case was ready for the final hearing. As indicated above, the claimant was fully aware of her obligation to disclosure early on in this litigation, and her attempt to put the respondent under pressure and derail the proceedings so close to the final hearing, making it difficult if not impossible for the respondent to comply with case management orders, was both vexatious and unreasonable conduct.

The respondent's reaction

39. The respondent wrote to the claimant on the 14 July 2025 referring to receiving additional documents from her, it not being possible to finalise the bundle by 18 July and promised to provide a final bundle by 1 August 2024. The email includes the following *"it is not fair for the Respondent to be placed under undue pressure"* and revised deadlines dates were suggested of 8 and 15 August respectively. The email was written the day before the solicitor in charge of the litigation went on holiday.

40. The claimant responded on the same day referring to the Tribunal allowing a variation of 2 weeks and wrote *“I appreciate you receiving additional disclosure today, but the majority of the latest information provided consists of details the Respondent is already aware of, and has but could not find, which I have to provide.”* The claimant ignored the fact that the respondent would need to check through the 1000 documents and video material, and did not agree to the proposal, relying on case management orders, suggesting the respondent made an application for a further extension and *“should the court grant this I am willing to work the new dates.”*

41. On the 15 July 2025 the respondent applied to the Tribunal to vary the timetable. Reference was made to the respondent sending the claimant additional disclosure in April and May 2025, and the claimant sending 1000 documents on 8 and 11 July 2025 stating the following *“the Respondent’s representative makes no criticism of the Claimant and appreciates that additional disclosure arises.”* The respondent’s complaint was that the claimant refused to extend the time limits to 8 August and not 15 August as the fee earner was returning from holiday on 5 August 2025. I have taken into account the respondent’s response in arriving at an objective assessment that individually and cumulatively, the claimant’s conduct of this litigation was vexatious and unreasonable. The respondent had been put on notice by at least two judges that given the claimant remained it its employment, it should work with her. The respondent’s solicitors attempted to comply, despite the claimant putting up barriers with a view to pressurising the respondent into a settlement before the final hearing and ignoring the Tribunal’s instructions that she should work with the respondent. I found that the claimant was in breach of the overriding objective, and also she ignored case management orders agreed with the judge earlier, except those that suited her making it almost impossible for the respondent to comply without a great deal of effort and incurring considerable costs.

42. In an email to the Tribunal the claimant explained she had agreed to an extension that aligned with the Tribunal’s maximum variation ordered at a preliminary hearing. The respondent’s application was granted by the Tribunal.

Claimant's application dated 23 July 2025

43. On the 23 July 2025 the claimant made an application to the Tribunal to include video evidence proving the existence of job plans.

The fifth preliminary hearing held before me on the 11 August 2025

44. I have the advantage in this case in that I witnessed the claimant's unreasonable conduct first hand.

45. On the 11 August 2025 I heard the claimant's application to amend and on refusing it, made a number of case management orders including the list of issues which were agreed with two amendments suggested by myself. At para 13 I recorded; *"It was agreed the pleaded case is contained in ET1A (the claimant's first amended claim form) together with the further amendment granted on 11 April 2025. The Order and Reasons were sent to the parties on 17 June 2025. I am assured that the List of Issues reflects the claimant's pleaded case with the amendment granted on 11 April 2025."*

46. The claimant had made an application to adduce video evidence, which I discussed with the parties, and case management orders were agreed, suggesting the claimant took legal advice on the contents and length of her witness statement. The respondent was ordered to send to the claimant an index by 28 August 2025 and bundle by 18 September 2025, with exchange of witness statements by 6 October 2025 as the earlier case management orders had not been complied with as a result of the claimant's default. The list of issues was attached in the Appendix, and it reflected a complex case involving numerous comparators and allegations including on 16 October 2024 one of the claimant's colleagues staring at her and following her to theatre. It is unfortunate the claimant did not seek legal advice on how she put her claims going back in time.

The 27 August 2025 preliminary hearing written reasons requested by the claimant

47. On the 27 August 2025 the claimant requested written reasons for my decision to reject her application to amend and at paragraph 4 of the reasons sent to the parties on the 3 November 2025 I recorded

"This litigation is lengthy and convoluted. It has been set down for a 15-day trial starting on the 4 November 2025, in less than 3-months. The case is not ready for trial. Not only is the claimant seeking to amend her claim out of time near to the trial, but there is a dispute over video evidence and the bundle, which runs to over 2250 pages" noting the claimant's application was not entirely clear.

48. At para. 12 I recorded the following *"Nine days after being sent the Order and Reasons the claimant made a third application to amend. The reasons provided by the claimant for the delay in her application is unconvincing and not credible. The claimant explained she is a litigant in person and did not understand she could include the actions of the counter-fraud team as acts of race discrimination. and believed it was 'purely' for the criminal courts. By the 28 June 2025 claimant had been involved in three preliminary hearings when her claims and draft issues were discussed. Whilst the claimant was representing herself she had access to advice and support. The claimant was still employed by the respondent and if she had any doubt as to what she could and could not claim the claimant could obtain legal advice. The claimant could have also raised the possibility of amending her claim at one of the preliminary hearings. She chose not to do so, which is unsurprising given the claimant's position on 17 January when the claimant applied to exclude material the respondent sought to rely on relating to a fraud allegations asserting it was prejudicial."*

49. At para.24 I referred to the following *"The claimant… has not provided satisfactory reasons for why she waited so long before making her amendment application raising materially new factual allegations."*

50. On the 5 September 2025 the claimant emailed the respondent with a colour coded table (without the consent of the Tribunal) and a further 24 documents. The colour coded table is lengthy and appears to be an aide to the claimant and not necessary for compliance with case management orders. As a result of the respondent receiving the communication midnight before the parties were to agree the contents of the bundle, the respondent sought an extension of time to 18 September for an electronic copy of the bundle and 25 September for a hard copy. I find that the claimant's conduct was both vexatious and unreasonable and it resulted in extra work for the respondent and legal costs. There was no need for a colour coded table, and the disclosure of documents was last minute, as was the claimant's habit. I inferred given the factual matrix of the case, including the claimant's attempts to settle, that this was a ploy on the part of the claimant to put pressure

on the respondent to settle, and accept Ms William's submissions on this matter. This was not an act of naivety on the part of a litigant in person who possessed little knowledge about Tribunal procedures and I concluded on balance, that the claimant's actions were calculated to upset the respondent and derail the litigation.

51. In an email sent on the 8 September 2025 the claimant refused and extension of time, suggesting to the respondent how it should run its case, pointed out that I had ordered none of the dates specified can be varied, which was correct. The claimant wrote *"…my legal advice is fully dependent and conditional on the bundle being completed and available on Thursday the 18 September…I will need to final bundle by the 18 September at the latest."* It is notable that as recorded below, when the claimant did receive the bundle on the 18 September 2025 she did not take legal advice until much later,

<u>The claimant sending further disclosures to the respondent 16 September 2025</u>

52. On the 16 September 2025 the claimant sent further disclosures to the respondent indicating she would be applying to the Tribunal for a anonymisation order or a private hearing for some disclosures for the first time. This application was never made.

53. There was also some late disclosure by the respondent and on the 18 September 2025 the respondent confirmed the bundle had been redrafted as requested by the claimant and the colour coded table included. It is apparent from the email correspondence I have read, that the respondent was doing its utmost to work with the claimant, who remained employed by it was this was a complicating factor in the litigation for it. The respondent complied with case management orders, and the claimant did not download the bundle on receipt until the next day, despite refusing the extension of time request.

<u>Cost warning letter 24 September 2025.</u>

54. On the 24 September 2025 the respondent emailed the claimant a *"without prejudice save as to costs letter – Costs Warning – do not ignore."* The heading of the letter was clear, and the contents of the letter detailed including a reference to all of the respondent's witnesses

evidence maintaining there was no evidence to substantiate the claimant's complaints of discrimination. The letter included the following *"We have until this comparative late stage in proceedings taken a conscious decision to hold off making this costs warning on the basis that it was felt reasonable to explore all witness responses to the allegations you have made, in addition to awaiting the outcome of your recent amendment application to the Tribunal…at this juncture in the case we consider that to continue with your claims and allegations…despite no evidence to any allegation linking to your race or protected acts you allege, is wholly unreasonable…**Your conduct in these proceedings has been obstructive and unnecessarily protracted. You have sought to amend your claim on multiple occasions, often at a late stage…made unreasonable applications…served hundreds of pages within impracticable timeframes, including duplications, disregarding our concerns of the time it will take to review and add to the bundle, whilst simultaneously unreasonably maintaining that we must adhere to the Tribunal's case management directions"*** [my emphasis]. A drop hands with both parties bearing their own costs was offered.

55. Within the body of the letter reference was made to earlier negotiations *"which you refused without the provision of a sensible counteroffer…"* the costs estimate was £50,000 to £60,000 including counsel's fees to be incurred for the judicial assessment (*"ADR"*) and final hearing. The respondent reserved the right to refer to the letter *"and any related correspondence in support of our client's application for costs."*

56. In an email sent to the respondent on the 24 September 2025 the claimant dealt with the final bundle suggesting minor changes, and it is clear she did not believe or accept that the respondent had produced all the job plans for all comparators and referred to case management orders made by myself earlier regarding video evidence. The claimant did not respond to the offer.

57. Witness statements were exchanged on the 6 October 2025.

58. An ADR took place on the 15 October 2025.

<u>The first communication from the claimant's legal advisor</u>

59. On 17 and 20 October 2025 David Stephenson emailed the respondent to inform them that he was instructed under the Direct Public Access Scheme about the case. Settlement on a drop hands basis was no longer an option. David Stephenson's correspondence was marked *"without prejudice save as to costs"* in respect of the email sent on 17 October 2025, as was correspondence from the respondent.

Claimant withdrawal on 21 October 2025

60. In an email sent on the 21 October 2025 at 14.15 the claimant gave *"immediate notice of full withdrawal and request not to issue Judgment of dismissal"* giving a *"formal and unequivocal notice of withdrawal of the entire claim"* and applying for the Tribunal not to issue a Judgment dismissing the claim as she wished to *"expressly reserve the right to pursue a breach of contract claim in the County Court."* The claimant did not clarify what the breach of contract claim was. The original ET1 included race discrimination and made no reference to breach of contract. I find that the claimant's withdrawal was also unreasonable in that she attempted to stop the Tribunal from issuing a judgment dismissing all her claims, as it was required to do under the Tribunal Rules and Presidential Guidance with no basis whatsoever, in an attempt to threaten the respondent with continued litigation, albeit in the County Court.

61. In a judgment sent to the parties on the 18 November 2025 the proceedings were dismissed on withdrawal by the claimant.

The Law

62. The parties are in agreement as to the applicable law as set out in the respondent's application and claimant's Skeleton Argument.

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

64. Rule 74 (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) …

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—

…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…

(3) A costs order under sub-paragraphs (b) to (d) of paragraph (1) may exceed £20,000.

65. Rule 76(2) provides that *"The Tribunal **must** consider making a costs order … where it considers that [inter alia] a party has acted unreasonably in … bringing [defending] proceedings, or the way that the proceedings … have been conducted"* (emphasis added).

66. In considering whether to make a costs order on the basis of unreasonable conduct, the Tribunal should consider the gravity, nature and effect of that party's conduct: ***McPherson v BNP Paribas (London Branch)*** [2004] ICR 1398. The Tribunal should look at the *"whole picture"* of what has happened in the case: ***Yerracalva v Barnsley Metropolitan Borough Council*** [2012] ICR 420. The effect of the unreasonable conduct is always a relevant factor, but there is no

requirement to demonstrate that specific unreasonable conduct caused particular costs to be incurred (Mummery LJ at [19 to 20] of ***Yerracalva*** referring to his own judgment in ***McPherson****)*.

<u>Oral submissions referred to by Mr Stephenson on behalf of the claimant. Ms Williams on behalf of the respondent and my conclusion applying the law to the facts.</u>

67. In arriving at my decision, I have not cited all of the case law referred to but have taken it into account. I also refer to my findings of facts set out above, in their entirety, as a basis for the decision that the claimant has acted vexatiously, abusively, disruptively or otherwise unreasonably in the way that the proceedings, or part of it, have been conducted.

68. I accept the principle that a litigant in person should not be judged by the same standards as a professional, and this should be borne in mind. However, a litigant in person has to act reasonably, and the claimant is no exception. I agree that litigants in persons are likely to act without objectivity and knowledge of the law. However, the claimant in her witness statement, which I have read, set out her qualifications including being the first ophthalmic surgeon in Wales to trial ophthalmology on a digital platform and published papers. The claimant is a well-qualified professional who clearly had some legal knowledge evidenced by the party-to-party correspondence in the bundle, the various applications she made, and arguments raised against the respondent during hearings. The claimant remained employed by the respondent during this litigation, and despite guidance from a number of judges suggesting she obtained legal advice, the claimant, unlike a number of litigants in person, had the means to access legal advice, which she did very late in the day. It is notable the claimant, when refusing to agree the length of extension sought by the respondent after she had sent it 1000 additional documents in July and additional documents in September wrote: *"my legal advice is fully dependent and conditional on the bundle being completed and available on Thursday the 18 September…I will need to final bundle by the 18 September at the latest"* and yet it appears the claimant instructed Mr Stephenson via direct access after exchange of witness statements and not after the bundle was received by her on 18 September 2025.

69. In ***Gee v Shell UK Ltd [2003] IRLR 82,*** the Court of Appeal reiterated that Orders for costs in Employment Tribunals remain the exception, rather than the rule.

70. The word unreasonable is not defined although it requires a high threshold to be passed when making a costs order, see paragraph 19 of the judgement of HHJ ***McMullen QC in Osonnaya v Queen Mary*** **[2011]** EUEAT/0225/11.The authorities make it clear the Tribunal must not substitute its view for that of the Claimant but must review the decision or decisions taken by the Claimant. The test has been described as *"wide and objective"* and one which may include having regard to the party against whom the order is sought having an *"unreasonably distorted perception of matters"* **Brooks -v- Nottingham University Hospitals NHS trust UKEAT /0246/18.**

71. Ms Williams submitted that the focus must be on the claimant's conduct. I agree. Reference was made to **McPherson v BNP Paribas (London Branch) 2004 ICR 1398 CA**, it was confirmed that a tribunal should take into account the nature, gravity and effect of a party's unreasonable conduct considering the totality of the circumstances. It should identify the unreasonable conduct, what was unreasonable about it and what effect it had. On the basis of my findings above, I took the view that the claimant had met this test objectively assessed.

72. Mr Stephenson submitted that the respondent defaulted on case management orders and delayed, further in taking the *"pragmatic approach"* with respect to the amendments and disclosure it was *"complicit"* and at no stage did the respondent say the claimant was vexatious until this application. I did not agree. It is clear from the party-to-party correspondence and correspondence to the Tribunal, the respondent's solicitors were trying to find a solution to the difficulties within the litigation, not least, the ongoing duty to disclose documents and the claimant's belief that the respondent had not disclosed all of the work plans.

73. The legal test for an award of costs is the same, whatever the claim. In the case of ***Madu v Loughborough College [2025] EAT 52*** the Employment Tribunal noted, in many discrimination claims, there will be features that require specialist consideration when that legal test is applied. In that case, the Employment Appeal Tribunal held that a Tribunal had erred when ordering Mr Madu, who had been unrepresented at the outset of his claim, to pay £20,000 in costs. The

Tribunal had not taken account of the difficulties faced by an unrepresented claimant who is trying to determine whether a discrimination claim has no reasonable prospects of success. In ***Madu,*** the Employment Appeal Tribunal drew a parallel between cost orders in discrimination claims and the approach of the House of Lords in the case of ***Anwu v Southbank Students Union [2001] IRLR 305*****,** to the strike out of discrimination claims. The House of Lords held that discrimination claims should not be struck out as an abuse of process for having no reasonable prospects of success, except in "**the plainest and most obvious cases"** [my emphasis]. It was a matter of public interest that Tribunals should examine the merits and particular facts of discrimination claims. The House of Lords noted that *"discrimination cases are generally fact-sensitive, and their proper determination is always vital in our pluralistic society. In this field, perhaps more than any other, the bias in favour of a claim being examined on the merits or demerits of its particular facts is a matter of high public interest."*

74. I took the view that the decision in ***Madu*** (above) can be differentiated from the claimant's case, in that I have not considered whether Ms Obi's claim had any reasonable prospect of success and concentrated exclusively on whether her actions amount to vexatious, abusive and unreasonable conduct in the way she had conducted these proceedings, objectively assessed, before concluding that the test was met. I did not accept Mr Stephenson's submission that there was no improper motive on the part of the claimant, having inferred from the claimant's acts that she was *"abusing the procedure"* in order to make the litigation as difficult as possible for the respondent and force a settlement in her favour before the trial, and when she failed in this regard, withdrew all of her claims two weeks before trial after all of the work had been carried out by the respondent, who was forced to circumvent a number of obstacles (as recorded above) thus increasing the pressure on it and the solicitors which resulted in a substantially increasing legal costs.

<u>Vexatious conduct</u>

75. The classic definition of vexatious conduct was that of Sir Hugh Griffiths in ET ***Marler Ltd -v- Robertson*** **[1974]ICR 72 at 76,** *"if an employee brings a hopeless claim not with any expectation of recovering compensation but out of spite to harass his employers or for some other improper motive, he acts vexatiously, and likewise, abuses the procedure."* Mr Stephenson submitted there was no evidence of improper motive on the part of the claimant referencing to the tone of

the correspondence she sent, she was *“learning on the job”* and asked questions of both the respondent and Tribunal, pushed back on the respondent’s requests for an extension in an attempt to comply with Judge’s orders, granted extensions when she could in compliance with Judge’s orders.

76. Ms Williams referred to ***Scott v Russell 2013 EWCA Civ 1432 CA,*** it was confirmed that *“the hallmark of a vexatious proceeding is one that has little or no basis in law; that whatever the intention of the proceedings may be, its effect is to subject the Defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the Claimant, and that it involves an abuse of the process of the court meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper court process”*. I preferred Ms. Stephenson’s submissions given the particular facts in this case.

77. Mr Stephenson submitted that the essential difference between vexatious and unreasonable conduct is that for vexatious conduct **the party concerned must pursue the claim knowing it has no reasonable prospects of success or it depends on false evidence or pursues the claim out of malice towards the other party or for some other ulterior reason** whereas with unreasonable conduct the party need not be aware that the claim has no reasonable prospects of success. The respondent made no application for a strike out or deposit order and would not have waited until the 24 September 2025 *“drop hands”* costs warning letter. I do not find this argument persuasive in the knowledge that respondents in discrimination claims rarely make an application for a strike out and/or deposit orders and to have done so in this case does not denote the respondent had taken the view that the claimant had a reasonable prospects of success. It is clear from the without prejudice offer to drop hands the respondent’s position was that the claimant was unlikely to success in her claim. Soon after the offer the claimant withdrew her claims after the drop hands offer had expired two weeks before the final hearing after a lengthy and contorted lead up with numerous applications and hearings.

78. Turning to the original grounds relied on by the respondent I find as follows:

<u>Ground 1 List of Issues</u>

79. Ms Williams sets out the chronology in the respondent's written application, submitting that there were five versions of the list of issues and new allegations that did not arise out of the pleaded case. Ms Williams explained that the respondent did not make a *"huge fuss"* and was "pragmatic. " I agree, this much is clear from the documents I have read, and the respondent cannot be criticised for the approached it took with the claimant.

80. It is a factor that many if not most cases received by the Tribunal, especially those involving discrimination complaints, are convoluted, overly complex, entail applications to amend, numerous allegations that are duplicated under the different strands of allegations, albeit with slight differences in wording, take lengthy case management and involves a number of preliminary hearings before they are ready for trial allocations across a considerable number of days ranging from 6 days upwards. This case is however different to the norm, given the claimant's persistent unreasonable conduct.

<u>The List of issues</u>

81. When it came to the agreed list of issues it was a uphill struggle for the claimant, respondent and various judges to make sense of the case sufficiently to produce an agreed list of issues, and this took time which unfortunately led to increased costs being generated by the respondent in circumstances where it did not accept the claimant, who remained employed in the department where a number of the witnesses worked, had a case to answer. The fact that there are numerous lists of issues, possibly nine in this case, which does not necessarily denote unreasonable conduct. The Tribunal case managed this claim through to final preparations for the trial and had the respondent wanted to put a stop to the claimant's applications to amend and attempts to list in the issues claims which were not part of the pleaded case, there was an option for it not to be so pragmatic and contain the claims to the pleaded case with the claimant having to make a full application to amend and prepare a draft amended grounds of complaint in support. This did not happen, possibly for a number of reasons not least the fact that the claimant was still working as a consultant in the hospital.

82. I agreed with Mr Stephenson that the time it took to agree a complex list of issues was not unusual. However, the duplication and slight changes to the wording in the different strands of discrimination set out

in the list of issues was unreasonable and resulted in a longer hearing allocation, which could have been avoided.

Ground 2 unreasonable repeated requests for disclosure

83. Ms Williams submitted that the claimant had made open ended disclosure requests prior to formal direction from the Tribunal. I find that this is not unusual in cases involving litigants in person, especially when a SAR was sent to the respondent earlier, as it was in this case. Litigants in persons do not understand the process, and it is not unusual for a judge to take a litigant in person through the documents he or she seeks in an application for specific disclosure. There was an ongoing issue with the job plans, which the respondent confirmed had been disclosed and the claimant did not believe this, insisted on producing video evidence showing that the respondent was not right without the leave of a judge.

84. Ms Williams referred to the claimant's application for specific disclosure of fraud documents relating to one of her colleagues, and the refusal by a judge on the 11 April 2025. As set out above, I find the claimant's behaviour unreasonable in respect of this application, which resulted in an increase in costs on the part of the respondent.

85. Mr Stephenson submitted that for the most part the respondent agreed to specific disclosure requests, and this was confirmed by Ms Williams who explained that the respondent took a pragmatic approach to how the claimant ran the case. I agree with Ms Williams that it did, as evidenced in several of the communications above. This was to the respondent's credit as it was dealing with a demanding litigant in person producing a raft of documents and complex list of issues involving numerous comparators. The claimant remained an employee and the respondent was doing its best to walk the difficult line between defending a claim, which it believed was unmeritorious, brought by an employee who was working with a number of the witnesses it intended to call. The relationship between the claimant and the legal advisors was one of distrust and described by more than one judge at the preliminary hearing stage as *"fractured and needs to be rebuilt (not least because they have an ongoing employment relationship)."* The position was not assisted by the claimant's attitude to the litigation, who was polite in her persistent demands, attempting to conduct the litigation through correspondence and applications, including the application for a recusal when there was no basis, culminating in the

withdrawal of all claims on conditions to avoid a dismissal on withdrawal judgment. The claimant's action was unreasonable.

86. I do not intend to work through all the requests for disclosure, clarification and the video evidence produced by the claimant. The claimant disclosed her video evidence very late in the day despite her belief that the respondent had not fully disclosed some relevant documentation even when she was being told by the respondent and a judge that the documents did not exist. On the evidence before me, I did not accept Mr Stephenson submission that the claimant *"could not see the wood for the trees"* when it came to managing her case and dealing with the respondent, and found she was fully aware of the Tribunal processes and tried to use them to her advantage.

Ground 3: recusal application

87. Ms Williams relied on the recusal application as evidence that the claimant would always have a comeback if something did not go in her favour, in contrast to the respondent who tried to assist the claimant getting ready for a lengthy trial.

88. Mr Stephenson pointed out that in the claimant's recusal application she was not *"rude or offensive"* and was perfectly entitled to make it as it was her perception and *"it cannot be right or in accordance with the overriding objectives that any unsuccessful recusal application resulted in a cost application"* I agree. It is not unusual (although it cannot be said to be the norm) for parties to make recusal applications when they do not agree with a judge and the claimant's actions reflect her attempts throughout this litigation to take control of the proceedings. However, I am satisfied the recusal application was symptomatic of an unreasonable approach in acrimonious litigation.

Ground 4: Late application to amend her claim

89. Mr Stephenson submitted you can make an application to amend at any time, even after case has been heard. That is not determinative. It is the balance of prejudice –and the application was determined against the claimant because of risk of jeopardising the final hearing. A litigant in person should not be criticised for something after the event and making an application to amend. I do not agree, and the written reasons referred to above make it clear that I found the claimant's reasons for

the delay in making the application to amend unconvincing and not credible.

90. I preferred submissions given by Ms Williams that the claimant's application dated 28 June 2025 was unreasonable. It was very late in the day given the respondent was attempting to finalise the bundle in compliance with case management orders that had been varied several times against a background of adjournments occasioned by an expanding list of issues, witnesses and documents. The claimant was aware of all of these matters, and that as of 17 January 2025 the claimant's application was to exclude material relating to a fraud allegation.

91. I do not accept that the claimant. by producing a colour coded table including links to disclosure, and refusing to go beyond the Judge's orders by agreeing to respondent's request for an extension of time, was unreasonable per se. It may have suited the claimant to push the respondent to its limits with a view to forcing a settlement, and it may have irked the respondent when the claimant insisted on receiving the bundle by a certain date and yet when received she did not immediately download it. Taken by itself, the claimant's behaviour in this regard is a far cry from unreasonable conduct that could attract a costs order. However, when assessed cumulatively with the claimant's other behaviour, I find that the claimant's action in producing a lengthy document without the consent of the Tribunal last minute was unreasonable in view of the specific facts in this case.

Ground 5: approach to agreeing the hearing bundle

92. The Respondent relies on the fact that the Claimant did not agree to an extension of time for production of the bundle beyond the 14-day period which I prohibited. I agree with Mr Stephenson that the Claimant cannot be criticised for not agreeing something that was contrary to a Judge's order, even if it put the respondent's solicitor was put under an enormous amount of pressure at the time. However, as indicated above, the claimant's attempt to serve 1000 documents before the bundle was due to be agreed was unreasonable and vexatious.

Ground 6: Unreasonable refusals of offers and withdrawal of claim

93. It is a fact that a final hearing bundle consisting of approximately 3000 documents was sent to the claimant on the 18 September 2025. It is not relevant when the claimant accessed the electronic bundle, save in respect of her indication to the respondent that she intended to take legal advice on the 18 September 2025. The claimant did not seek legal advice until after witness statements were exchanged on the 6 October 2025 and the expiry of the respondent's *"drop hands"* offer. Mr Stephenson submitted that witness statements are the most important documents. I agree, and it is notable that an ADR requires the exchange of witness statements before a judge can realistically assess the case. The ADR was moved to 15 October 2025 having originally been listed for 9 October 2025 and the reason for this was the claimant's unreasonable behaviour. There were 14 witnesses' statements including the claimant's own statement that ran to 127 pages (ignoring the guidance I gave at the August 2025 preliminary hearing).

94. Mr Stephenson attended the ADR on 15 October 2025, following which the claimant withdrew her claim on the 21 October 2025 after an unsuccessful attempt to negotiate a financial settlement and/or the *"drop hands"* offer.

95. Ms Williams submitted that the claimant was withdrawing because she did not want a Judgment on record that was not favourable to her and must have known she did not have a good case but waited two weeks before the final hearing to withdraw her claim. I have some sympathy with the respondent bearing in mind the contents of the claimant's withdrawal letter. The respondent and claimant did not meet the case management orders (for a number of reasons) until after the final orders made at the preliminary hearing in August 2025 by me. The result of this was that everything was left last minute including providing the claimant with an agreed bundle and witness statement exchange, following which she took legal advice from Mr Stephenson who appeared at the ADR. The respondent's *"drop hands"* offer was also last minute in the scheme of things, given this litigation had been ongoing for a number of years. The *"drop hands offer"* and ADR may well have achieved the outcome sought by the respondent, which was for the claimant to discontinue her case and avoid a 15-day hearing. I took the view that given the chronology in this case and tight time limits, the claimant's unreasonable conduct was however made out taking into

account the delays in the case were directly attributable to her actions as set out within the factual matrix above.

Conclusion referring to the above and applying legal principles

96. Costs orders are exceptional and not the rule. The purpose of a cost award is compensatory and not punitive; ***Lodwick v London Borough of Southward [2004] ICR 884*** and the judgment of Underhill J in ***Yerrakalva*** (above).

97. With reference to the EAT decision in ***Mr M Willis V 1) GWB Harthills LLP 2) Miss Hester Russell 3) Mrs Elizabeth Lord - [2025] EAT 79*** HHJ Taylor set out at para.5 the application of Rule 74 and 82 of the 2024 Rules by splitting them into three stages to be dealt with by the Tribunal in the case.

98. Stage 1: is there conduct that could warrant making a costs order (*"threshold conduct"*). For the reasons set out above, I am satisfied that the claimant was guilty of unreasonable conduct that could merit the making of a costs order, including disclosing 1000 documents very late in the day, and making the application to amend heard by myself as set out in the findings of facts above. In respect of the claimant's unreasonable behaviour, I do not find that it was caused or contributed by the respondent in any way and do not accept Mr Stephenson's submission that the respondent's actions caused severe delay resulting in the claimant's application to amend. The respondent did not apply to strike out the claimant's complaints or seek a deposit order, but nothing hangs on this as the claim was complex and the claimant's application to amend dismissed in any event by myself. It was the claimant's actions which resulted in the severe delay.

99. I do not accept Mr Stephenson's submission that contrary to the impression the Respondent gives to the Tribunal, the Claimant did not act recklessly or without guidance. I found that she did. The claimant had made applications to amend early on during the litigation, and by the time she came to make the application heard by myself in August 2025 was fully aware of the Tribunal's rules, the importance of complying with case management orders and obtaining legal advice. On the evidence before me I do not accept Mr Stephenson's submission that the claimant has done *"her best as a Litigant in Person, trying her best to navigate a complex case involving difficult legal and procedural issues."* The claimant did not do her best, but this is not the test. The claimant acted unreasonably as set out above, including when

it came to the late application to amend, especially given the position she had adopted early on in the litigation in relation to the respondent's reliance on fraud documents, to which the claimant objected.

100. In arriving at the decision that the claimant behaved unreasonably, I took into account the full background to this claim bearing in mind that professional standards are not applied to the claimant. I had in mind the test set out in ***McPherson v BNP Paribas*** above, and took into account the nature, gravity and effect of claimant's unreasonable conduct considering the totality of the circumstances. Even taking into account the claimant's status as a litigant person, she was given many opportunities to amend and clarify her claims that resulted in a second claim form, further and better particulars, extensive disclosure, applications to amend and correspondence clarifying those claims and yet it took it upon herself to change her position on the admissibility of fraud documents and attempt to bring in a new compliant which, if granted, would have de-railed the final hearing and entailed a raft of new case management orders which the claimant could have articulated this claim early on, for example, when she made the applications earlier in the litigation.

101. The next stage is to list a Stage 2 and 3 hearing to consider whether an award of costs be made (*"the discretionary decision"*) – the Employment Tribunal may have regard to ability to pay at this stage. The claimant has submitted a witness statement dealing with means and evidence attached, which will be updated and sent to the respondent 14-days before the next preliminary hearing.

Case Management Orders

102. At the next preliminary hearing the only additional document will be the claimant's updated statement of means.

103. The respondent will highlight to the claimant the amount of costs it is seeking with VAT arising from this Judgment 28-days after receipt of the Reserved Judgment and Reasons. The claimant will then confirm 28 days after receipt of this information whether she agrees the amount of costs, and if not, give cogent reasons why.

104. Given the amount of costs spent by both parties to date, particularly the respondent, they may wish to have a discussion about what costs are to be paid and see whether an agreement can be reached.

105. In the event of the cost hearing proceeding to the next stage, the parties will provide the Tribunal with their availability over the next 8 months 21 days from the date this Reserved Judgment and Reasons is sent to them.

106. Skeleton Arguments will produce by both parties in respect of stages 2 and 3 7 days before the costs hearing. Any case law relied on will be highlighted and copied.

107. The costs hearing will take place by CVP video evidence before myself and listed for 1-day in order that the claimant can give oral evidence on means and be cross-examined if appropriate. The one day hearing allocation will take into account the claimant's evidence, submissions made by the parties limited to 30 minutes each, time for deliberations and giving oral judgment and reasons. I did not want to hearing to go part-heard, and if the parties are in agreement that the costs hearing will take longer than 1-day will inform the Tribunal immediately, with an estimated length of hearing and cogent reasons for it.

Approved by:

Employment Judge Shotter

DATE 11 May 2026

RESERVED JUDGMENT SENT TO THE PARTIES ON

22 May 2026

Katie Dickson

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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/