



EMPLOYMENT TRIBUNALS

Claimant: Mr L Baxter

Respondent: Chief Constable North Wales Police

HELD AT: In Chambers – paper consideration by consent

on: 8 July 2026

BEFORE: Employment Judge T. Vincent Ryan

REPRESENTATION:

Claimant: Written Application and submissions

Respondent: Written Application and submissions

DECISION

**On preparation time orders and wasted costs orders
The Employment Tribunal Procedure Rules 2024
Rules 72-82**

The Decision of the Tribunal is:

1. The Claimant's application for a Preparation Time Order is refused.
2. The Respondent's application for a Wasted Costs Order is refused.

Reasons

1. Introduction:

1.1. This Decision is made in a situation where the Claimant unsuccessfully claimed Sex Discrimination in relation to recruitment, his failed application to the Respondent for a civilian post, he subsequently applied for a Preparation Time Order, and the Respondent applied for a Wasted Costs Order.

1.2. The Claimant presented his ET1 Claim form on 1 April 2025 ("the ET1"); he named Richard Birkby in the ET1 as his representative, with whom future

contact would be made. Mr Birkby represented the Claimant at all the case management hearings and the final hearing (23-26 March 2026); I am satisfied that most of the inter-party correspondence was conducted with and by Mr Birkby, and I gained the impression, from the electronic case file and the conduct of the final hearing, that Mr Birkby was well-prepared, extraordinarily thorough, and was taking the leading role in the litigation with supporting instructions from the Claimant; my clear impression, which may be wrong without affecting the decision I have made, was that, however motivated the Claimant was in this matter, Mr Birkby was the lead, and a tenacious, protagonist.

- 1.3. The Respondent issued several costs warnings to the Claimant, emphasising its position that the Claimant had no reasonable prospects of succeeding with his claim. The warnings rehearsed facts and reasoning that happened, eventually, to coincide with my findings of fact and judgment.
 - 1.4. I dismissed the Claimant's claim in an oral judgment announced on 26 March 2026, set out in a short written judgment dated on the same date and sent to the parties on 30 March 2026. The Claimant requested written Reasons; The Reasons were signed on 16 April and sent to the parties on 28 April 2026.
2. The Employment Tribunal Procedure Rules 2024 – I set out below the relevant provisions:
 - 2.1. Rule **3. Overriding objective**
 - (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
 - (2) Dealing with a case fairly and justly includes, so far as practicable—
 - (a) ensuring that the parties are on an equal footing,
 - (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues,
 - (c) avoiding unnecessary formality and seeking flexibility in the proceedings,
 - (d) avoiding delay, so far as compatible with proper consideration of the issues, and
 - (e) saving expense.
 - (3) The Tribunal must seek to give effect to the overriding objective when it—
 - (a) exercises any power under these Rules, or
 - (b) interprets any rule or practice direction.
 - (4) The parties and their representatives must—
 - (a) assist the Tribunal to further the overriding objective, and
 - (b) co-operate generally with each other and with the Tribunal.

2.2 Rule **72. Definitions**

In this Part—

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

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

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

2.3 Rule 73. Costs orders and preparation time orders

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

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

- (1) The Tribunal may make a costs order or a preparation time order (as appropriate) on its own initiative or on the application of a party or, in respect of a costs order under rule 73(1)(b), a witness who has attended or has been ordered to attend to give oral evidence at a hearing.
- (2) The Tribunal must consider making a costs order or a preparation time order where it considers that—
 - (a) a party (or that party’s representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings, or part of it, or the way that the proceedings, or part of it, have been conducted,
 - (b) any claim, response or reply had no reasonable prospect of success, or
 - (c) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which that hearing begins.
- (3) The Tribunal may also make a costs order or a preparation time order (as appropriate) on the application of a party where a party has been in breach

of any order, rule or practice direction or where a hearing has been postponed or adjourned.

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

2.5 Rule **76. The amount of a costs order**

- (1) A costs order may order the paying party to pay—
- (a) the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party;
 - (b) the receiving party the whole or a specified part of the costs of the receiving party, with the amount to be paid being determined—
 - i. in England and Wales, by way of detailed assessment carried out either by a county court in accordance with the Civil Procedure Rules 1998, or by the Tribunal applying the same principles;
 - ii. in Scotland, by way of taxation carried out either by the auditor of court in accordance with the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019, or by the Tribunal applying the same principles;
 - (c) another party or a witness, as appropriate, a specified amount in respect of necessary and reasonably incurred expenses for the purpose of, or in connection with, an individual's attendance as a witness at a hearing;
 - (d) an amount agreed between the paying party and the receiving party in respect of the receiving party's costs.
- (2) Where the costs order includes an amount in respect of fees charged by a lay representative, for the purposes of the calculation of the order, the hourly rate applicable for the fees of the lay representative must not exceed the rate under rule 77(2) (the amount of a preparation time order).
- (3) A costs order under sub-paragraphs (b) to (d) of paragraph (1) may exceed £20,000.

2.6 Rule **77. The amount of a preparation time order**

- (1) The Tribunal must decide the number of hours in respect of which a preparation time order should be made, on the basis of—

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

2.7 Rule 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.
- (3) A wasted costs order may not be made against a representative where that representative is representing a party in their capacity as an employee of that party.
- (4) In this rule, and in rules 79 (effect of a wasted costs order), 80 (procedure) and 82 (ability to pay), "representative" means a party's legal representative or lay representative or any employee of such representative, but it does not include a person who is not acting in pursuit of profit with regard to the proceedings. A person acting on a contingency or conditional fee arrangement is considered to be acting in pursuit of profit.
- (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.

2.8 Rule 79. Effect of a wasted costs order

A wasted costs order may order a representative to pay the whole or part of any wasted costs of the party in whose favour the order has been made, or to disallow any wasted costs otherwise payable to the representative, including an order that the representative repay to their client any costs which have already been paid. The amount to be paid, disallowed or repaid must in each case be specified in the order.

2.9 Rule 82. Ability to pay

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

3. The Procedure:

3.1. The Claimant has applied, with supporting documents, for a Time Preparation Order. The Respondent then applied for a Wasted Costs Order, which it specifically confirmed was made against the Claimant and not against Mr Birkby. On my direction, each party has replied to and commented on the other's application; each has reinforced their own application in written submissions. Both parties consented to my dealing with the matter on the papers submitted, instead of at an in-person hearing.

4. The Claimant's Application:

4.1. The Claimant's submissions, apparently prepared by Mr Birkby, are characteristically thorough and detailed, citing breaches of Orders, alleged delay, errors in witness statements and with disclosure and the like. I need not rehearse the entirety of the application and submissions.

4.2. It is apparent from all that I have read and seen at first hand that Mr Birkby has made this litigation unduly complicated, when such claims are complicated enough as evident from the agreed list of issues, and unreasonably onerous. He appears to have willingly accepted the onus but unreasonably imposed one on the Respondent, above and beyond what could reasonably be expected of a Respondent in such litigation by way of preparation. Mr Birkby has made repeated and several Freedom of Information requests and Data Subject Access Requests for documents in addition to applications for general and specific disclosure; He has pursued correspondence in respect of all of that. In essence he has chosen to embark on a course and pattern of litigation that was bound to cause administrative difficulties and delays to the Respondent. That was his choice and may have been his tactic (and whether it was or was not tactical matters not to my decision).

4.3. Parties to litigation often encounter difficulty in compliance with timetables and in handling necessary administrative actions to which litigation gives rise. The Respondent's handling of the claim was not perfect, but the overriding objective of the Tribunal is not to insist on perfection from parties and their representatives. It is not reasonable of a party to litigation to expect that the other party will devote excessive time and attention to responding to demands at the expense of their other work and concerns or interests.

4.4. I accept that the Claimant spent the time claimed in preparation. I accept the Respondent's stated rationale, defences, excuses and mitigation (including admission and apology) as set out in its written submissions.

4.5. In essence, the issue to be determined in the claim was whether the Claimant was not appointed to a role because he was male, or because of his mother's involvement in the recruitment process and his subsequent disengagement

from said process. There were ancillary issues, including about patent errors in advertisements where the Claimant could not demonstrate any detriment to him or more favourable treatment having been given to comparators (real or hypothetical). Instead of concentrating on those matters, Mr Birkby took it upon himself to extend his areas of investigation beyond a reasonable remit and to apply pressure on the Respondent to prepare in ways that it was not able to meet his demand.

4.6. It is up to a party to litigation to decide how it wishes to carry out its own preparation but a different matter when it comes to whether they can insist on payment for doing so, such as by way of a time preparation order, when they have made the work more complicated, involved and onerous than it need have been. That is what the Claimant, and by extension Mr Birkby, has done here.

4.7. Having considered all written submissions from both parties I do not consider that the Respondent has acted vexatiously, abusively, disruptively or otherwise unreasonably in the way that the proceedings have been conducted. Obviously, I do not consider that the response had “no reasonable prospect of success”; the response to the claim succeeded for all the reasons that the Respondent always made out to the Claimant it would.

4.8. The Tribunal may make a costs order or a preparation time order on the application of a party where a party has been in breach of any order, rule or practise direction. This is discretionary. I have to have in mind the overriding objective of the Tribunal in exercising my discretion. Because of the way in which the Claimant, and by extension Mr Birkby, has conducted the litigation, I do not believe that it would be in the interests of justice to make a time preparation order in the Claimant's favour.

4.9. Even allowing for the complexity of the proceedings, the number of witnesses and the relevant and necessary documentation as indicated by the list of issues in the case, I do not consider that the time and effort spent by the Claimant, and by extension Mr Birkby, to have been reasonable and proportionate. To a large extent, the time and effort was a personal choice for reasons of the Claimant's own and, perhaps influenced by the tenacity with which Mr Birkby chose to pursue the Respondent. It would not be in the interests of justice to compensate the Claimant and penalise the Respondent in these circumstances.

5. The Respondent's Application:

5.1. The Respondent has made an application for a wasted costs order. When Mr Birkby correctly pointed out that he could not be the subject of one as he was not acting In pursuit of profit, the Respondent specifically stated that its application for a wasted costs order was made against the Claimant personally.

5.2. A wasted costs order is an order made against a representative. Mr Birkby was the representative, and the Respondent is not pursuing an application against him.

5.3. The application is misconceived and is dismissed.

Approved by Employment Judge T V Ryan

Date: 08.07.26

JUDGMENT SENT TO THE PARTIES ON

16 July 2026

Kacey O'Brien

FOR THE TRIBUNAL OFFICE