



EMPLOYMENT TRIBUNALS

Claimant: Dr P Lee

Respondent: The University of Birmingham

COSTS HEARING

Heard at: Birmingham

On: 27 May 2026

Before: Employment Judge Camp, Mr J Reeves, Ms S Campbell

Appearances

For the Claimant: in person

For the Respondent: Mr D Bayne, counsel

FULL REASONS

1. At this hearing, the Tribunal unanimously decided: that the whole claim had no reasonable prospects of success; that it would be fair and just to order the Claimant to pay the Respondent's reasonable costs of the proceedings from 2 February 2024 to the conclusion of the final hearing, limited to £20,000 maximum; that the sum the Claimant should pay is £20,000. The written judgment was sent out on 1 June 2026. Summary or full reasons were given orally at the hearing for all of those decisions. The Claimant requested written reasons and the Tribunal has decided, in its discretion, to give written full reasons for all of those decisions, including those for which only summary reasons were given orally. This is on the basis that the Claimant has expressed an intention to appeal and will need written full reasons to do that.
2. By way of background, see:
 - 2.1 the Reserved Judgment and Reasons sent to the parties on 30 January 2025 ("Reserved Judgment & Reasons");
 - 2.2 the Respondent's application for costs of 27 February 2025 (the "Application");
 - 2.3 the Reconsideration Judgment & Reasons sent to the parties on 13 March 2025;

- 2.4 the Respondent's solicitors' email of 3 April 2025 limiting its costs claim to £20,000;
 - 2.5 Employment Judge Camp's directions and orders of 8 April 2025;
 - 2.6 the Respondent's statement of costs of 2 June 2025;
 - 2.7 the "*Claimant's statement*" for the costs hearing dated 13 April 2026;
 - 2.8 the Tribunal's letter of 22 May 2026 containing some information from Employment Judge Camp;
 - 2.9 Respondent's counsel's skeleton argument dated 21 May 2026 and the Claimant's written response to it dated 24 May 2026.
3. We shall here re-use the abbreviations and terminology used in the Reserved Judgment & Reasons. There continues to be a privacy order in place in relation to the identity of the woman referred to as "BCD".
 4. The Application is made on the basis that the Claimant brought or conducted the proceedings unreasonably; and/or that his claims had no reasonable prospects of success. It relies on Rule 74(2) of the ET Procedure Rules 2024 ("ETPR"), which is as follows:
 - (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, [or]*
 - (b) *any claim ... had no reasonable prospect of success ...*
 5. The relevant law is helpfully summarised in paragraphs 3 and 4 of Respondent's counsel's skeleton argument, to which we refer. Our focus is on the "*no reasonable prospect of success*" part of the application. This is because:
 - 5.1 the things the Claimant did that arguably constitute unreasonable conduct in and of themselves, such as producing an unreasonably long witness statement containing many matters of no relevance to the issues in dispute, are things routinely done by litigants in person; the Tribunal was not asked to, and did not, make an order limiting the length of statements; and we are not satisfied that such things have made a significant difference to the amount of costs that have been incurred by the Respondent;
 - 5.2 the potentially most significant instance of alleged unreasonable conduct consists of continuing to pursue a claim that allegedly had no reasonable prospects of success, in the teeth of a costs warning letter. That is inseparable from whether or not the claim had no reasonable prospects of success (and, if it did, whether we should make a costs order) and could only possibly be unreasonable conduct if the claim did indeed have no reasonable prospects of success.

6. It follows that what we have to decide is:
 - 6.1 do we consider that the claim (or substantial parts of it) had no reasonable prospects of success?
 - 6.2 if so, should we exercise our discretion to make a costs order in the Respondent's favour?
 - 6.3 if so, how much should we award, up to the £20,000 that the Respondent has limited its claim to?
7. When assessing whether the claim had no reasonable prospects of success, we are consciously seeking to avoid falling into the trap of assuming that the way we decided this case was the way any and every Tribunal would have decided it; and therefore that the claim was always bound to fail. Although there is not a presumption against awarding costs in Employment Tribunals as such, doing so is very much the exception and not the rule, the onus is firmly on the Respondent to persuade us not just that the claim had no reasonable prospects of success, but also that we should exercise our discretion to award costs in its favour, and we give the benefit of any doubt to the Claimant.
8. Finally by way of introduction, background and the law, we note Rule 82 and what has happened in relation to it. That Rule states: "*In deciding whether to make a costs order ..., and if so the amount of any such order, the Tribunal may have regard to the paying party's ... ability to pay.*" In summary, Rule 82 has featured in the following way:
 - 8.1 the Claimant did not respond to a case management order to the effect that if he wanted to rely on his ability to pay as grounds for opposing the making of a costs order at all, or making a costs order of less than £20,000, he had to tell the Respondent and the Tribunal that this was so and to provide particular evidence;
 - 8.2 in the run-up to the hearing, the Tribunal wrote noting this non-response and that Rule 82 uses the word "*may*" and not "*must*", and warning him that this "*would potentially be a basis for the Tribunal to decide that it should not, in its discretion, have regard to the claimant's ability to pay*";
 - 8.3 at the start of this hearing, we spent some time discussing with the Claimant whether, notwithstanding his failure to respond to the above-mentioned case management order, he did want to argue that, because of his financial means and ability to pay, no costs, or costs of less than £20,000, should be awarded against him. As part of those discussions, we explained to the Claimant that if he did, he would, at the very least, have to give oral evidence on oath or affirmation about his financial means and ability to pay and be cross-examined by Respondent's counsel. (We also made clear we had not made a final decision as to whether we would permit him to raise that argument, given his failure to provide the evidence he was supposed to have provided if he was wanting to raise it; we would have to have considered any objections from the Respondent before deciding that.);

- 8.4 it was surprisingly difficult during our discussions with him to get a clear answer from the Claimant to the question of whether he was asking the Tribunal to take into account his ability to pay, but, ultimately, he indicated he was not asking us to and he declined to give oral evidence;
 - 8.5 we explained to the Claimant that in those circumstances we thought it would be inappropriate for us to have regard to his ability to pay in relation to costs and we would not be doing so. He raised no objections to this;
 - 8.6 in correspondence after the hearing in relation to his application for a stay of the costs order, the Claimant appeared to confirm that he was not suggesting he was unable to pay the £20,000 costs award that was made against him.
9. With all of that in mind, we turn, first, to whether we are satisfied that the claim had no reasonable prospects of success.

Did the claim have no reasonable prospects of success?

- 10. We start by noting our decision in paragraphs 64 to 66 of the Reserved Judgment & Reasons that the complaints in 5.1.1 and 6.2.1 [of the List of Issues] are misconceived. Given what those complaints were about – as confirmed by the Claimant at the final hearing – they can never have had any chance of success, let alone a reasonable prospect of success.
- 11. Moving on to the complaints of detriment for making protected disclosures – 3.1.1 and 3.1.2 in the List of Issues – these had no reasonable prospects of success because the Claimant was never going to be able to show that he made a relevant protected disclosure. The key reason for this is that – see paragraph 155 of the Reserved Judgment & Reasons – he never actually believed, let alone believed reasonably, that the legal obligation he identified as being the one he had in mind actually existed.
- 12. We repeat our observations in paragraph 25 of the Reserved Judgment & Reasons as to how that came to be identified as the [alleged] legal obligation the Claimant had in mind at the time of the [alleged] protected disclosure. We do so because during this costs hearing, the Claimant seemed to be suggesting that he believed there was a breach of some other legal obligation. That was not his case at the final hearing. We note that what alleged legal obligation someone had (or did not have) in mind, and whether they had a particular alleged legal obligation in mind, is a question of fact, and we made findings about that in relation to the Claimant.
- 13. We also note what we wrote in paragraph 154.7 of the Reserved Judgment & Reasons about what the Claimant's true case was on the facts in relation to this issue. In summary: his case in practice was different from his case in theory; his case in practice was not that he had made a protected disclosure, in that it was not that he had disclosed information which he believed tended to show a breach

of an alleged legal obligation on universities generally, and on the Respondent in particular, to submit an annual statement on research misconduct to Parliament.¹

14. In conclusion, given the Claimant's true case on the facts, and our decision on what he actually believed, he never had any reasonable prospect of persuading any Tribunal:
 - 14.1 that he believed, and believed reasonably, that the information he disclosed tended to show breach of a legal obligation as alleged;
 - 14.2 therefore that he made the alleged protected disclosure;
 - 14.3 therefore that he had been subjected to the alleged or any detriments on the ground that he made a protected disclosure.
15. We reach that conclusion even without taking into account the complete absence of any evidence suggesting cause and effect between the alleged protected disclosure and the alleged detriments, something that weakened these complaints still further.
16. We move on to the complaints of direct sex discrimination and of victimisation we have not already considered, which we take together. These are complaints 5.1.2, 5.2, 6.2.2 and 6.2.3 in the List of Issues.
17. Whatever else, as we noted in the Reserved Judgment & Reasons (e.g. in paragraphs 128.6 and 134), there was no substantial basis in the evidence that was put before us for us to find that any part of the reason for the treatment the Claimant made his direct sex discrimination complaints about was the protected characteristic of sex, nor for us to find that any part of the reason for the treatment he made his victimisation complaints about was that he did a protected act. It was not a case of individuals not coming up to proof or of the evidence not coming out quite right for the Claimant: the evidence was simply non-existent. These complaints therefore never had any reasonable prospects of success.
18. Further, we note that the evidence upon which Claimant principally and erroneously relied (and seemingly still relies) in support of his assertion that the protected characteristic of sex was a reason for the allegedly directly sexually discriminatory treatment was not something he knew about when he presented his claim form. That evidence was the email of 22 November 2020 from Ms Hackworth Williams (see paragraphs 100 and 101 of the Reserved Judgment & Reasons). This means that when he brought the claim he had even less of a reason for thinking that there had been sex discrimination in relation to the things he was making his sex discrimination claim about than he did latterly.
19. Moreover, as was emphasised in the Reserved Judgment & Reasons, in the Reconsideration Judgment & Reasons, and in the EAT's Rule 3(7) decision of 5 May 2026, that email does not in fact support the Claimant's case because the people he accused of sex discrimination were not involved with that email. The

¹ A potential alternative case seemingly put forward in the Claimant's reconsideration application was described as "*fanciful*" in paragraph 8.3 of the Reconsideration Judgment & Reasons.

Claimant appears to have some difficulty grasping this point, but even if he had proved beyond reasonable doubt that Ms Hackworth Williams treated BCD more favourably than the Claimant was treated by someone else, and that she did so because BCD is a woman, and even if BCD were a valid comparator in accordance with section 23 of the Equality Act 2010 (“EQA”) – none of which is the case – he would not have begun to prove that that someone else did what they did because of the protected characteristic of sex. Although the Claimant brought his claim against the Respondent as a corporate entity, it was – like nearly all discrimination, victimisation and whistleblowing claims – in practice about the acts and omissions of individuals and in practice the Claimant had to show² that particular individuals did what they did because of the protected characteristic of sex. Proving one individual is potentially a discriminator or victimiser or persecutor of whistleblowers, without more, does nothing to prove that a different individual is one, even if they have the same employer.

20. In addition, in circumstances where the Claimant chose to put forward no evidence at all in relation to time limits and extending time on a just and equitable basis, there was in practice no reasonable prospect of his discrimination or victimisation complaints succeeding. (See paragraphs 158 to 163 of the Reserved Judgment & Reasons.) If the Claimant were to suggest that the reason he didn’t cover these issues is that he did not realise he was supposed to, we reject that. They were included in the List of Issues and, as we noted in paragraph 29 of the Reserved Judgment & Reasons, *“he clearly knew what the List of Issues consisted of and its importance, in that he diligently went through [most of] it in his witness statement”*. See also paragraphs 30 and 31 of the Reserved Judgment & Reasons.
21. In summary on this point: none of the Claimant’s complaints had any reasonable prospects of success and we therefore have a discretion to award costs against him, pursuant to Rule 74(2)(b).

Should we exercise our discretion to award costs?

22. We have already explained that we have decided not to take the Claimant’s financial means and ability to pay into account because: the Claimant told us, after discussion, that he was not asking us to do so³; Employment Judge Camp had made an order to the effect that if the Claimant wanted us to take them into account, he would have to provide particular evidence well before the hearing⁴ and he did not provide it on time or at all; if he had wanted us and asked us to take them into account, he would have needed to give evidence about them before we might have done so; he was unwilling to give evidence about them.
23. In cases such as the present one, whether the claimant knew or ought to have known their claim had no reasonable prospects of success is usually highly relevant. We think it is probably the single most important factor here.

² Subject to EQA section 136.

³ Notwithstanding indirect references to them in some of his submissions.

⁴ The date for compliance in the order was 2 June 2025, nearly a year before the costs hearing.

24. A striking feature of this case is that, as best we can tell, the Claimant never actually thought about whether the case he was bringing had any reasonable prospects of success. He appears to us really not to have thought about that case very much at all. What he was thinking about, and based on his submissions today is still thinking about, was various things he was not bringing his claim about, e.g. his allegation that he was groomed and sexually harassed by BCD, other alleged actions of BCD, the actions of people who dealt with his 2019 grievance, the contents of that grievance, the outcome of that grievance and so on. We touched on this in our Reserved Judgment & Reasons, in paragraphs 15 and 16 in particular.
25. In so far as the Claimant thought at all about how he was going to prove that the reason why particular things happened to him was the protected characteristic of sex, that he made a protected disclosure and/or that he did a protected act, his thought-process seems to have been similar to that in relation to the email of 22 November 2020 we referred to earlier. It appears to have been along these lines: if he showed that, historically, one person at the Respondent treated him badly, that would somehow prove that some other person at the Respondent, whose actions he was making this Tribunal claim about, was a discriminator or victimiser or persecutor of whistleblowers. We are not, though, satisfied he substantially engaged with this question of causation / the 'reason why' at all.
26. We don't want to over-egg the point, but the Claimant, although a litigant in person and not legally trained, is a highly intelligent and capable man. We can safely assume that in his academic career he routinely engaged in logical analysis and weighing evidence and thinking about what evidence is necessary to prove something one way or the other on the balance of probabilities.
27. We do not accept, in so far as it is alleged, that the Claimant's undoubted mental ill-health meant he was unable adequately to apply his mind to his claim. The huge amount of time and mental effort he has devoted to these proceedings is palpable. He has been well able to think about and engage with matters subjectively of importance to him; it is just that those matters seemingly did not include how he was actually going to win in Tribunal.
28. His failure to engage properly with the 'reason why' issue is of a piece with his neglect of time limits issues in his evidence and with his approach to the issue of whether he made the alleged protected disclosures. If he didn't, in his heart-of-hearts, know his claim had serious problems, he ought to have known.
29. Even if we were to excuse the Claimant's failure to think about how he was going to prove and win his case at the beginning, there is no reasonable excuse for his failure to do so once he received the Respondent's costs warning letter and the separate settlement offer (for £50,000), both of 25 January 2024.
30. The costs warning letter was relatively lengthy and detailed. It explicitly highlighted the Claimant's difficulties in proving that the (or a) reason for the treatment he was making his claim about was sex, the making of a protected disclosure, or the doing of a protected act. It also clearly explained why he would fail to show that he made protected disclosures. It was sent to him at 10.20 am and the settlement offer was sent at 12.42 pm. The Claimant responded on the same day at 1.30 pm. His response included this: *"Your client has decided to be economical with the truth*

and therefore wasted time and money. It is not my responsibility for the costs involved, nor my responsibility for rejecting offers to settle when there is no acceptance of any responsibility by your client. The court will no doubt see that I have been reasonable throughout, and I will demonstrate the mendacity obfuscatory nature and waste of taxpayers money that your client has indulged. I do not appreciate receiving these threatening letters which are based on no understanding of the case or a proper reading of the evidence against your client." It appears to us, from the speed and contents of his response, that the Claimant either did not read the costs warning letter and merely scanned it; or, if he read it, ignored its substantive contents.

31. Of course it is difficult to be objective about one's own case and the Claimant evidently has very strong emotions and feelings about what he perceives as the Respondent's mistreatment of him. But, putting to one side the fact that the alleged mistreatment he appears to be most aggrieved about was not the alleged mistreatment he brought his claim about, there comes a time when any claimant, even a litigant in person, has to engage with the case they have brought, to some extent at least. Not to do that is unreasonable conduct in and of itself.
32. We think the time when the Claimant ought to have engaged was, at the latest, when the costs warning letter came in.
33. The settlement offer, generous though it was, is less significant in the context of our decision-making than the costs warning letter. The ETPR do not contain anything remotely comparable to Part 36 of the Civil Procedure Rules. Those who drafted the ETPR could have included something like that and have evidently deliberately chosen not to. Similarly, the predecessor to Part 36 – the rule or practice adopted further to the 1976 High Court Family Division case of **Calderbank v Calderbank** – has been applied in the civil and family courts since at least the early 1980s, but has never been followed in the Industrial / Employment Tribunals (see e.g. **Kopel v Safeway Stores** [2003] IRLR 753). In addition, the Respondent's offer was only left open for acceptance for just over a week, which might well not have been enough time for the Claimant to take and to consider legal advice, had he been reasonable and sensible enough to want to take advice.
34. Nevertheless, particularly taken in conjunction with the costs warning letter, the settlement offer should have given the Claimant pause for considerably more thought than the, at most, half an hour or so it took him to reject it out of hand. £50,000 is a large sum of money by most people's standards. We note that the Claimant is suggesting today that his annual income is £40,000. Even if the costs warning letter by itself did not cause him to think, "Am I really going to win this case and if so how?", receiving such an offer together with that letter ought to have done.
35. We should add that we reject the Claimant's suggestion in submissions that he thought the phrase "*subject to any necessary deductions*" in the settlement offer meant that what the Respondent was offering was to pay him £50,000 but then pursue him for over £120,000 of costs. If he genuinely thought that, and we don't think he did, it was not a rational thought. And if he was genuinely unsure what was meant by the phrase, he could, and we think would, have asked for clarification, via Acas or directly from the Respondent's solicitors.

36. The Claimant in his submissions seemed to be suggesting that he had been forced by the Respondent to be here in the Employment Tribunals and that the Respondent had been wasting its money – public money as the Claimant himself has repeatedly emphasised – defending the claim. We would remind him that he chose to make the claim and he could equally have chosen not to make it, or to have withdrawn it at any stage. The Respondent had to incur legal costs to defend the claim because he was pursuing it and because he was, it seems, not prepared to settle it for any reasonable sum. At around the time he received the costs warning letter, he was apparently asking for £650,000. As we mentioned in paragraph 1 of the Reserved Judgment & Reasons, the Schedule of Loss of July 2023 that we had before us at the final hearing valued his claim at over half a million pounds. If he is suggesting that the Respondent should simply have paid him what he was demanding instead of defending a claim we have decided had no reasonable prospects of success, all we can say is that we profoundly disagree.
37. In all these circumstances, there seems to us to be no good reason at all, given that we have a discretion to award costs, not to do so. The Claimant is responsible for a gigantic waste of the Respondent's time, resources and money, as well as wasting Employment Tribunal time and resources that would have been better spent on more meritorious claims and/or on claims brought by claimants willing to approach settlement negotiations sensibly. Throughout, he appears to have been stubbornly focussed on matters that were, at best, peripheral to the claim he was bringing and to have shut his eyes to the weaknesses of that claim, which he ought to have known he had no real chance of winning. We are aware that the Claimant has faced and is facing a number of personal difficulties and challenges, and he has our sympathies in relation to them, but we know of nothing that significantly mitigates his conduct. Not to award costs would be to condone what the Claimant has done and would be contrary to the overriding objective. No costs is the default in Employment Tribunals, but we do not, and should not, operate a completely costs and consequences-free regime.
38. In conclusion, we think it would be appropriate, in the exercise of our discretion and in accordance with the overriding objective, to award the Respondent its reasonable costs from 2 February 2024 onwards, which is the date of expiry of the settlement offer of 25 January 2024.

How much should we award in costs?

39. The Respondent limiting its costs claim to £20,000 has made this part of our decision very straightforward and we can be brief.
40. We have explained why we are not taking into account the Claimant's financial means and ability to pay. In any event, the Claimant has not even attempted to satisfy us that he would be unable, without undue hardship, to pay up to £20,000.
41. What we are therefore doing is an abbreviated form of summary assessment, on the standard basis, of the costs incurred by the Respondent from 2 February 2024 to the date we gave judgment. This would include its costs of considering that judgment, but not any costs relating to its application for costs or to the Claimant's post-judgment correspondence, including his application for Reconsideration. It would not include those costs because we have made no decision as to the

reasonableness of the Claimant's actions or as to his prospects of success in these respects.

42. In relation to the amount of costs, we are looking broadly at three things, with the burden of proof in relation to each of them being on the Respondent: was the particular item of costs reasonably incurred in principle, e.g. was it reasonable for the Respondent to be legally represented at the final hearing?; was the amount charged and incurred in relation to that item reasonable?; were costs overall proportionate?
43. The reasons the Respondent deciding to limit its costs claim to £20,000 make answering these questions so straightforward and the reasons we only need to carry out an abbreviated form of summary assessment of costs are:
 - 43.1 we only need to be satisfied that the Respondent's reasonable and proportionate costs are more than £20,000 and if we are satisfied of that we do not need to go any further and assess what the total reasonable costs bill would be;
 - 43.2 looking just at the Respondent's costs of and directly relating to the final hearing (e.g. counsel's fees), more than £20,000 has been reasonably incurred;
 - 43.3 plainly it was reasonable for the Respondent to be legally represented at an 8-day final hearing of a case where the Claimant was claiming over £ ½ million;
 - 43.4 in relation to advocacy fees alone, we doubt any suitably experienced and competent legal professional could be found to prepare for and conduct the final hearing for less than £20,000;
 - 43.5 £20,000 is well within the realms of what was proportionate.
44. Accordingly, we award the Respondent the £20,000-worth of costs it has limited its claim to, on the basis that its reasonable and proportionate costs from 2 February 2024 are significantly in excess of that sum.
45. Finally, we note the Claimant's comments in oral submissions to the effect that the Respondent's costs application, and the Tribunal awarding costs against him, are punitive steps, which have a potentially chilling effect on workers wanting to enforce their employment rights. Those comments are misplaced:
 - 45.1 a party in an Employment Tribunal is entitled to seek costs and an Employment Tribunal is entitled to award them costs in certain circumstances. Much the same situation pertains in the County or High Court, it's just that the circumstances in which there is an entitlement to seek and award costs are different there;
 - 45.2 the question is never whether the paying party is deserving of punishment. Instead, it is, first, are the circumstances those that potentially give rise to an entitlement to costs and, secondly, if so, would it be fair and just in accordance with the overriding objective to award costs;

- 45.3 apart from in some special cases which don't arise here, costs are always compensatory, in that the receiving party is not allowed to claim more in costs than it has paid or is liable to pay its legal representatives;
- 45.4 in the present case, the Respondent has claimed and has been awarded significantly less than it has paid or is liable to pay its legal representatives;
- 45.5 our award of costs should have no chilling effect on any worker who seeks to enforce their employment rights by pursuing, in a reasonable manner, complaints in an Employment Tribunal that have at least some merit. Win or lose, such a worker will never have to pay the other side's legal costs in accordance with the ETPR as they presently are;
- 45.6 it would be no bad thing if Employment Tribunals awarding costs in cases like this one discouraged the bringing of completely unmeritorious claims and encouraged people to think about their chances of winning and to engage in reasonable and realistic settlement discussions.

Addendum: In the fortnight or so after the hearing, there was some correspondence between the Claimant and the Tribunal. (The Tribunal's correspondence was drafted by Employment Judge Camp.) Some of it may be informative and/or potentially relevant in relation to the Tribunal's costs decisions and we refer to that correspondence. From the Tribunal's point of view, the most significant part of it was what the Employment Judge took to be confirmation from the Claimant that he was not saying that his ability to pay should have been taken into account or that he could not afford to pay, or that he needed more time to pay.

Employment Judge Camp
Approved on 5 September 2026