EMPLOYMENT TRIBUNALS

Claimant: Mr M Kecsmar
Respondent: Fresh Direct Ltd.

Heard at: Cambridge Employment Tribunal
On: 4 September 2026
Before: Employment Judge Andrew Clarke KC
Members: Ms S W Smith
Ms L Davies

Representation
Claimant: In person
Respondent: Ms L Kaye, counsel (via CVP)

COSTS JUDGMENT

1. Pursuant to Rules 74 and 76 of the Employment Tribunal Rules of Procedure 2024, the claimant must pay to the respondent the sum of £8,000 by way of costs.

FULL REASONS

JUDGMENT with full reasons was given at the hearing on 4 September 2026 and written full reasons were requested at the hearing in accordance with Rule 60 of the Employment Tribunal Procedure Rules. The following written full reasons are therefore provided:

1. The claims in this matter were heard over five days in December 2025. Judgment with full reasons was sent to the parties on 14 January 2026. All of the claimant's various claims were dismissed.

2. On 26 February 2026 the respondent applied for costs. It initially suggested that the matter could be dealt with in writing but we decided that there should be an oral hearing because the claimant is a litigant in person and someone whose first language is not English. We permitted the respondent to attend via CVP.

3. At the full merits hearing the claimant had been assisted by an interpreter. We concluded as follows in paragraph 3 of our reasons.

> "The claimant is Hungarian and that is his first language. However the covert recordings and his evidence before us show that he has a good grasp of English; that

said he has had the help of an interpreter at this hearing."

4. In those circumstances, an interpreter was ordered to be provided for this hearing. Unfortunately, for reasons of which we are unaware, the interpreter cancelled the booking shortly after 6 am this morning. In those circumstances, we suggested that there were three available courses of action:

    4.1 firstly, that we continued without an interpreter having regard to the findings that we had already made concerning the claimant's grasp of English;

    4.2 Secondly, we sought to have an interpreter provided via CVP, it having been established that obtaining an interpreter to attend at the tribunal would no longer be possible, or

    4.3 Thirdly, the hearing was adjourned.

5. Having considered the matter the claimant indicated that he wished to proceed today without an interpreter. In the circumstances, that is what we have done. The respondent understandably took great care when explaining the submissions that were being made and we have made every effort to ensure that the claimant understood the proceedings and the language being used at any particular point as the matter has progressed.

6. The respondent has alleged that the claimant should pay a proportion of its costs of this litigation pursuant to Rule 74 of the Employment Tribunal Rules of Procedure. The basis for that (see Rule 74(2)(a)) is an assertion that the claimant behaved unreasonably in the conduct of these proceedings both at the final hearing and before. The respondent relies in its submissions on the following allegedly unreasonable conduct:

    6.1 The failure on the part of the claimant to obey orders of the tribunal thus leading to unnecessary correspondence and a further unnecessary preliminary hearing.

    6.2 The late disclosure of transcripts and original recordings of covertly made recordings of various relevant conversations. These were disclosed in late October 2025.

    6.3 The unreasonable conduct of the litigation at the full merits hearing, a point said to be demonstrated by an examination of the tribunal's findings.

7. The respondent seeks a fixed sum under Rule 76. The sum sought is £20,000 being the maximum fixed sum which this tribunal can award. That represents about fifty per cent of the respondent's true costs as set out in their detailed schedule with which we have been provided.

The law

8. We turn first to a brief consideration of the law. We start with the case of Yarrakalva v Barnsley MBC ([2011] EWCA Civ 1255). There the Court of Appeal set out guidance with regard to how to deal with applications for costs. The court began by making the obvious point that costs do not follow the event in the employment tribunal; rather the making of a costs order in favour of a particular

party is exceptional. The making of such an order must be done in accordance with the Rules. It is said that the tribunal should look at the whole picture when considering, in this case, unreasonableness, rather than seeking to attribute particular sums of costs to particular allegations of unreasonableness. Indeed, the Court of Appeal went on to recommend that tribunals should generally avoid over elaborate analysis but should look in broad terms at the overall nature, gravity, and effect of any particular allegation of unreasonableness not seeking to separate out those three concepts or seeking to consider each allegation individually. Finally, for our purposes, the Court of Appeal pointed out that the fact that some unreasonable conduct is established does not mean that the unreasonable party should pay the whole of the costs of the litigation.

9. The tribunal may, but not must, consider what amount a claimant can afford to pay when considering the making of a costs order. There are numerous authorities dealing with that point but it is now enshrined in Rule 82.

The merits of the application

10. We set out our detailed findings in relation to unreasonableness and other relevant matters below. But it is first necessary to deal with the claimant's response to the respondent's points summarised above. In broad terms, his response was that he had at all times done his best and that we should bear in mind that he was a litigant in person and not someone familiar with the operation of the legal system.

11. With regard to his means, despite having been advised by the respondent in correspondence to be ready to deal with the matter and to produce in advance any relevant documents, the claimant gave us only a very broad brush analysis of his means. He is unemployed but he is studying computing and programming with the hope that he may be able to obtain employment in that sphere in due course. He receives about £1,000 in benefits per month and his wife earns about £1,500 net per month. They have credit card debts in the order of £17,000. They rent their house and have no other significant assets. These figures were not challenged and we accept that position for present purposes.

12. We consider that the claimant did act unreasonably in his conduct of this case in the following respects:

    12.1 He certainly delayed in complying with orders regarding the identifying of his disability, the production of an impact statement and the disclosure of GP records. This led to a strike out application being made after efforts to persuade him to comply with the orders were unsuccessful. That application was not pursued at the preliminary hearing in September 2023 as the claimant had by then made efforts to comply with the orders. At that hearing, he was ordered to produce a schedule of loss by 22 November 2023 and witness statements were ordered to be exchanged by 13 March 2024. The respondent made efforts to enquire from the claimant as to why he did not comply with those various orders and offered to extend, and ultimately did extend, by agreement, the deadlines. However, by February 2025 neither the schedule of loss nor the witness statements had been produced. This led to a further strike out application. That application was heard on 10 September 2025. It led to unless orders being made. Employment Judge Tynan noted that the claimant had done

virtually nothing to progress his case for at least a year and had no explanation for that failure. It is clear to us that the claimant's various failures led to an increase in costs in this case not least being the costs of attending at a strike out application. Those costs would not have been incurred had the claimant complied with the original orders and most of them would not have been incurred had he complied with the agreed dates to which the original deadlines were extended.

12.2 The claimant certainly did give late disclosure of various recordings of relevant meetings which he had made covertly and transcripts of parts of those recordings. Disclosure of those matters so late in the day, a matter of three weeks' prior to the full merits hearing, would inevitably have caused aspects of the claimant's preparation to be revisited, including having the matters dealt with in the recordings considered by the various witnesses. Had the original timetable been adhered to, then those documents would have been disclosed prior to the original date for the exchange of witness statements in March 2024. We know from correspondence that the respondent was in apposition to exchange its witness statements on that date because it said so when inviting the claimant to agree to a time on that date for exchange. In fact, this disclosure came after the witness statements were eventually served. Furthermore, not all the recordings were transcribed and there were a total of approximately five hours of recordings and some of the dialogue was in a foreign language. Of course, some costs would have been incurred by the respondent in dealing with the transcripts and original tapes but we are satisfied that the costs were increased by reason of the late disclosure.

12.3 The claimant's conduct of the case undoubtedly has led to a significantly longer hearing than would otherwise have been necessary. Our reasons set out various concerns about how he conducted the case, how his case changed over time and how it failed at times to accord with the contemporaneous documents. The claimant was found by us to have continued to advance claims and arguments which he knew to be false. Various examples are dealt with in the reasons but we highlight one in order that it may be understood the sort of matters with which we are dealing. The assertion that Mr Dellar's statement given to the respondent about what the claimant had told him regarding his attendance at work over Christmas was false. He asserted that Mr Dellar was dishonest and that the production of the witness statement was part of a conspiracy amongst managers to fabricate a case against him. In fact, the transcript of a conversation with Mr Dellar, produced some three weeks' prior to the commencement of the trial, showed that the claimant did not dispute the accuracy of what Mr Dellar said in his statement and further showed the claimant to be trying to get Mr Dellar to go back to the respondent with a false account in order to help the claimant. Despite all of that, the claimant persisted before us in his assertions that Mr Dellar's evidence was false and that his statement was false and part of the conspiracy to which we have referred. Had those assertions been abandoned, Mr Dellar need not have attended to give evidence and a great deal of cross examination and evaluation of materials could have been avoided. We note that that is but one example of the sort of conduct to which we have referred.

13. It is important that we note that whilst we consider the covert recording process to be reprehensible, the fact that it was reprehensible has not influenced our decision with regard to costs. The costs regime in the employment tribunal is not punitive, rather it is intended to compensate for costs which ought to be not to have been reasonably incurred.

14. The costs threshold having been met, we have to ask ourselves whether the unreasonable conduct in this case merits the making of a costs order. We consider that it does. Costs were unnecessarily wasted as a result of the claimant's conduct. There was at least one unnecessary preliminary hearing. There was unnecessary correspondence. The tapes and transcripts had to be dealt with urgently and witnesses asked to revisit matters in their light. Had appropriate concessions been made and false points not pursued, the hearing would have been shorter. Those are, in our view, the sorts of unreasonable conduct which properly should be reflected in the making of a costs order. That conduct is inexcusable and, indeed, no excuse was suggested.

15. In fixing the appropriate amount of that order we have kept in mind:

    15.1 The likely costs associated directly with the unreasonable conduct. It is, of course, not possible for us to be precise but, for example, we think that the case could have been dealt with in about three (perhaps four) rather than five days had the bad points not been taken.

    15.2 The respondent's schedule of costs.

    15.3 The claimant's means, including the possibility of his obtaining work in the computing field at some time in the foreseeable future.

16. But for his presently limited means and the uncertainty as to job and remuneration prospects, we would have awarded a figure in excess of £10,000. However, keeping those matters in mind, we think that a sum of £8,000 is the correct figure. Hence, pursuant to Rule 74, we make an order for the payment by the claimant to the respondent of £8,000 in respect of the costs of these proceedings.

Approved by:

Employment Judge Andrew Clarke KC

15 September 2026

JUDGMENT SENT TO THE PARTIES ON
14 October 2026

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written full reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

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 here:
www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/