EMPLOYMENT TRIBUNALS

Claimant: Ms C Johnson

Respondent: ASDA Stores Limited

COSTS JUDGMENT

1. The Claimant's application for a preparation time order is granted in part.

2. The Respondent is ordered to pay to the Claimant the sum of £264.

REASONS

Introduction

1. This Judgment addresses the Claimant's application for a preparation time order ("PTO") in the sum of £2,208, based on 48 hours of preparation time at the rate of £46 per hour. I note that the current rate for a PTO is in fact £44 per hour – see rule 77(2) of The Employment Tribunal Procedure Rules 2024 ("the Rules") – so that in fact the application is for a PTO of £2,112.

2. I readily acknowledge that the Claimant's application has not been dealt with as quickly as it should have been. I have kept the parties informed of progress. Due to other judicial commitments and a period of leave, the first opportunity for me to fully consider the application and the parties' submissions was on 21 September 2026, at a Hearing on the papers. After that Hearing, I caused a letter to be sent requesting further information from the Respondent. It replied as ordered, on 7 October 2026, attaching 60 pages of documents related to its submissions. The Claimant also replied, with further attachments. I have considered all of the documents provided by both parties.

3. The Claimant's complaints of unfair dismissal and breach of contract were held to be well-founded following a Final Hearing before Mrs D Hill, Mr P Simpson and myself from 17 to 28 November 2025. Her complaints under the Equality Act 2010 were dismissed. The Employment Appeal Tribunal dismissed the Claimant's appeal on the paper sift on 28 July 2026.

4. Following a Remedy Hearing on 19 February 2026, the Claimant was awarded compensation for unfair dismissal and breach of contract by a reserved decision sent to the parties on 12 June 2026. The Claimant's application for reconsideration of that decision was refused in a further decision sent to the parties on 25 August 2026.

Application for preparation time order and parties' submissions

5. The Claimant first stated that she was seeking a PTO in her written submissions for the Remedy Hearing. She stated, "*This reflects the 27-month duration of the case and the additional labour necessitated by the Respondent's conduct. This includes responding to the late addition of two central witnesses on day 1 of the Hearing*". She went on to refer to the Respondent's representative, Ms Clayton of Counsel, referring to the Claimant's concerns about the Respondent's conduct as hypersensitive and paranoid which she says she found dismissive and mocking of her disability of anxiety and depression.

6. At the end of the Remedy Hearing, the Claimant informed the Tribunal that she would review whether to pursue her application for a PTO. On 9 March 2026, she emailed the Tribunal to confirm that she wished to do so, attaching what she called a supporting schedule. This was supplemented with a revised schedule on 21 April 2026.

7. It is clear from that schedule that the Claimant relies on how she says the Respondent conducted parts of the proceedings. She outlined in the schedule several ways in which she says that the Respondent's conduct was unreasonable and led to her having to undertake significant additional preparation work, highlighting her mental health disability and her limited access to IT facilities. In reply to my 7 August 2026 request for clarification of certain aspects of her application, the Claimant wrote again to the Tribunal on 13 August 2026. She again asked the Tribunal to take into account in assessing the time she took to deal with certain aspects of case preparation that she was a litigant-in-person, working solely on a mobile phone and struggling with her mental health. I now set out the parties' submissions on each element of the Claimant's application.

Hearing bundles

8. First, the Claimant said that the Respondent failed to provide her with bundle for certain hearings either in a timely manner or at all. It is noteworthy that at the Case Management Hearing on 5 July 2024, Employment Judge Perry had ordered the Respondent to provide her with an electronic and paper bundle 14 days before any [my emphasis] future Hearing. The Order reflected difficulties encountered at that Hearing because of the Claimant's limited access to IT facilities. Somewhat confusingly, EJ Perry ordered that the Claimant be provided with three or five paper copies, depending on the nature of the Hearing. This must have been intended to be a reference to the copies being provided to the Tribunal at the same time.

9. The bundle for a preliminary hearing on 21 October 2024 before Employment Judge Broughton was provided 7 days late. The Respondent says that this was due to it having to reduce the number of documents from that which had been used at the Hearing before EJ Perry, from 359 pages to 118 pages, for example

to reflect that the Respondent had conceded disability and was no longer pursuing a strike out application or jurisdictional points at the preliminary stage.

10. The Claimant received an electronic copy of the bundle on 11 October 2024 – a few minutes after she had written to the Tribunal raising that she had not received anything – and a paper copy on 14 October 2024. On 14 October 2024, she wrote again to the Respondent's representatives to say she disagreed with what the Respondent had included and removed from the bundle, expressing concern that there was very little time for her to address the issue. It is apparent that, at the Respondent's representatives' invitation, the parties spoke about the matter on the same date.

11. The next issue with provision of bundles arose in connection with a dispute resolution appointment ("DRA") and subsequent Case Management Hearing before Employment Judge Wedderspoon on 4 September 2025. The Claimant says that as a result of the Respondent's conduct she had to prepare her own bundle, did not have a copy of the Respondent's supplementary Grounds of Resistance, and that strike out applications could not be addressed as a result.

12. The Respondent says that there was no express Order requiring the Respondent to provide paper bundles for the Hearings on 4 September 2025. That is simply not correct, given the Order of EJ Perry on 5 July 2024 referred to above. The Respondent goes on to say that in any event the Claimant had all relevant documents for both Hearings. It can be seen from documents disclosed by the Claimant that on 2 September 2025 the Respondent's representatives emailed the Claimant with a pdf version of the bundle for the DRA. That did not comply with EJ Perry's Order: he had made explicit that she needed a paper copy. There appears to have been no bundle provided for the Case Management Hearing of the same day at all.

13. As to whether the non-provision of paper bundles meant that certain issues could not be addressed on 4 September 2025, the Respondent correctly states that there is nothing in EJ Wedderspoon's Orders indicating that anything remained unaddressed and no reflection on her part regarding the Hearing being hampered by the absence of a bundle. The Notice of Hearing dated 27 August 2025 stated that the Hearing would be concerned with the specific disclosure application, "all remaining issues relating to the bundle", and "any other matters necessary to ensure the case is ready for trial". EJ Wedderspoon's Orders suggest that all of those matters were dealt with.

14. It cannot be accepted therefore that a consequence of the Respondent's failure to provide the bundle for the Case Management Hearing on 4 September 2025 was that a strike out application could not be heard, though whilst the Respondent is doubtless correct that the Claimant had all of the documents for both Hearings in her possession, that is not the same as having those documents in a properly ordered paper file, and so it is accepted that the Claimant was required to put her own paper bundle together to ensure she could participate in the Hearing effectively.

15. The Final Hearing bundle was provided 14 days late. The Respondent says, supported by the email correspondence it has disclosed:

15.1. It was ordered to disclose documents to the Claimant by 16 December 2024 and sent them electronically on 18 December 2024 and then by post.

15.2. The Claimant was ordered to disclose documents to the Respondent by 23 December 2024. There were email exchanges between them in December and January and the Claimant sent additional documents on 11 April 2025.

15.3. There was further correspondence between the parties about disclosure in April and May 2025, including the Respondent's representatives making requests for further disclosure from the Claimant.

15.4. The bundle was to be sent to the Claimant by 25 April 2025. The Claimant's own email correspondence shows she received a paper copy on 10 May 2025.

15.5. A further proposed bundle was sent on around 25 June 2025. This was because in preparing its witness statements the Respondent discovered further documents (apparently 11 in total, comprising 188 pages) that needed to be disclosed. These appear to have been policy documents, Mr Cooper's grievance letter and grievance investigation notes. The Claimant objected to their being added to the bundle and wrote to the Tribunal on 26 June 2025 to that effect. The Claimant says she spent time reviewing the revised bundle, checking page numbering, identifying missing material and ensuring she had access to the relevant documents to carry out her preparations for the Final Hearing.

16. It can be seen from email correspondence that the Claimant provided a further document to the Respondent on 1 September 2025 and that on the same date the Respondent's representatives requested further evidence of her earnings since leaving the Respondent's employment.

17. The Claimant says that as a result of the above issues with Hearing bundles, she had to research how to respond, using her phone to go online and making notes; draft correspondence to the Respondent and the Tribunal; attempt to prepare for each Hearing without a complete bundle; review the new documents; and reorganise her preparations, resulting in duplication of work.

18. The Respondent submits that revisions to hearing bundles are commonplace as case preparation evolves. It says any delay in provision of bundles was not deliberate or obstructive and, generally, short and that in any event, the Claimant has not distinguished between work she would have had to do anyway, and additional work attributable to any default by the Respondent.

Witness statements

19. The second thing the Claimant raises is that the Respondent served its eight witness statements on her on 31 July 2025, around 28 days after the deadline ordered by the Tribunal, together with the revised hearing bundle referred to above.

20. The Respondent says:

20.1. Exchange of statements was due to take place on 4 July 2025.

20.2. Due to the delays in relation to disclosure and the hearing bundle referred to above, and some issues created by the summer holiday season, its representatives wrote to the Claimant on 20 June 2025 requesting a four-week extension.

20.3. As the Claimant did not agree, the Respondent's representatives wrote to the Tribunal.

20.4. In the absence of a response, statements were exchanged on around 1 August 2025.

Mr Cooper

21. The third matter the Claimant raises is that the Respondent refused to disclose documents relating to disciplinary action against Mr Cooper until ordered to do so by EJ Wedderspoon at the Case Management Hearing on 4 September 2025.

22. The Claimant says she had to look up Tribunal rules and guidance, and the Respondent's policy on how long documents are retained, write to the Respondent more than once and then write to the Tribunal, with the result that a preliminary hearing was necessary to deal with the matter – this was the Case Management Hearing on 4 September 2025 before EJ Wedderspoon referred to above. I note that EJ Wedderspoon ordered disclosure of the documents in question on the basis that they were relevant to the Claimant's Equality Act complaints. The Claimant submits that although those complaints were dismissed at the Final Hearing, she did not know at the time that they would be. She says the preliminary hearing was completely unnecessary.

23. The Claimant also says that she had to review the material relating to Mr Cooper once disclosed to analyse how the Respondent treated him compared to her, so that she could prepare cross-examination and submissions on alleged inconsistency of treatment.

24. The Respondent says it did not consider the documents relevant to the issues in the Claim. It can be seen in correspondence from the Respondent's representatives that it said to the Claimant that:

24.1. She was not alleging that no action was taken against Mr Cooper.

24.2. The documents and statements she already had in her possession showed that she and Mr Cooper were treated in the same way.

24.3. What the Claimant sought was not referred to in the list of issues.

25. The Respondent also says that the fact of the Tribunal's Order for disclosure does not, without more, establish unreasonable conduct, as disclosure disputes are not unusual. In any event, the work the Claimant had to undertake was a necessary part of her case preparations.

26. The Respondent's representatives wrote to the Tribunal on 11 August 2025, after the Claimant had raised non-disclosure, and confirmed that Mr Cooper attended a disciplinary hearing and was given a disciplinary outcome. The Respondent also points out that it invited the Claimant on 14 May 2025 to confirm whether she was awaiting any further documents from the Respondent. It did not receive the request for the documents related to Mr Cooper until August.

27. The Claimant made her disclosure application on 12 August 2025, which the Respondent opposed essentially on the grounds summarised above. The

Claimant's emails to the Respondent's representatives emphasised that what happened to Mr Cooper was relevant to whether the Respondent appropriately addressed her complaints about his conduct. The Respondent registered its objection to the application in the terms it had raised with the Claimant directly.

Witnesses

28. The fourth matter the Claimant raises, grouping a number of her points together, is that Mr Cooper was not initially a witness for the Respondent. He was called as a witness, together with Ms J Kwarteng, during the Hearing itself, which the Claimant says required her to review their statements, identify relevant documents in the 1,200-page bundle and prepare cross-examination. The Claimant says had she known that Mr Cooper would have been attending as a witness, she would have prepared to question him as part of her normal preparation timetable and not in a panicked state.

29. The Respondent submits that Mr Cooper and Ms Kwarteng were called as late witnesses by consent, after the Claimant had clarified on day 1 of the Final Hearing that they were the individuals said to have made comments to her which she alleged amounted to harassment. Any additional work required as a result was part of the Claimant's normal case preparation, albeit during the Final Hearing itself.

30. The fifth thing the Claimant raises is that Ms T Sumner, who was responsible for conducting disciplinary proceedings for Mr Cooper and would have done the same for the Claimant had she remained employed, was called by the Respondent to be a witness at the Remedy Hearing, requiring additional preparation on the Claimant's part.

Respondent's cross-examination and submissions

31. Sixthly, the Claimant says additional preparation was required following submissions characterising her concerns about the Respondent's conduct as paranoid or hypersensitive. She says she stayed up all night, working for 14 hours to complete revised written submissions for the Liability Hearing.

32. The Respondent submits that any comments about the Claimant being hypersensitive and paranoid were not unreasonable nor did they cause any additional preparation time beyond what would have been required in any event.

33. I have reviewed my notes of the Claimant being cross-examined and Ms Clayton's written submissions. The only references I can find to the matters the Claimant refers to are as follows:

33.1. In cross-examination at the end of day 2, on the allegation that the Claimant was ignored by her line manager, Ms Clayton suggested the Claimant felt the manager was ignoring her, the Claimant replied that she had heightened anxiety and Ms Clayton followed up with a single question which I have noted as, "So [you] could have been over-sensitive?"

33.2. In cross-examination at the start of day 3 on the same issue, Ms Clayton put to the Claimant that she was mistaken about the manager ignoring her and suggested the Claimant had been sensitive, to which the Claimant replied that this could have impacted how she saw things.

33.3. Later during day 3, Ms Clayton suggested three times that the Claimant was being "hypersensitive" in saying that Mr Munir had stared at her in the car park near the Tribunal building.

33.4. She suggested shortly afterwards that the Claimant was hypersensitive about Mr Cooper's conduct during her employment.

33.5. On day 4, when questioning the Claimant about what Mr Downs had written to her in the course of one of her grievance appeals, Ms Clayton said, "This is another example of you being hypersensitive" to which the Claimant replied, "Possibly".

33.6. Shortly thereafter, when the Claimant said she did not reconsider her decision to resign her employment because the relationship with the Respondent was already destroyed, Ms Clayton suggested she was being hypersensitive.

33.7. In her written submissions regarding the allegation that the Claimant had been ignored by her line manager, Ms Clayton stated that the Claimant presented as someone who was hypersensitive and could therefore have perceived there was a problem when there was not, and that the Claimant had accepted she was hypersensitive when it came to Mr Munir.

Remedy Hearing

34. Finally, in connection with the Remedy Hearing, the Claimant had to review policies and guidance following evidence that the Respondent had not followed certain aspects of its disciplinary procedure and had to prepare submissions addressing the Respondent's arguments on the likely outcome of a disciplinary case against her.

Other submissions

35. The Respondent also submits that:

35.1. The conduct identified by the Claimant was no more than "ordinary procedural disputes and hearing preparation issues arising in substantial Tribunal litigation".

35.2. The claimed 48 hours of preparation time is not adequately itemised or supported by evidence.

Law

36. The relevant rules of procedure are rules 72 to 82 of the Rules. In respect of this application, the particularly relevant rule is rule 74 which in part reads 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".

37. Case law provides regular reminders that such orders remain the exception not the rule in employment tribunal litigation, although that does not mean that exceptional circumstances are required, just that the relevant test is satisfied. Orders for a PTO are intended to be compensatory for the receiving party, not punitive for the paying party. A PTO is also intended to compensate for the time spent in preparation of any aspect of a case, not to compensate a party for stress or anxiety even if that is said to be attributable to unreasonable conduct by the other party.

38. In summary, the first step is to consider whether rule 74(2)(a) is engaged. If so, the second step is to consider whether to make a PTO; it is not mandatory to do so and tribunals have a wide discretion in that regard. If it is decided that a PTO should be made, the third step is to consider the amount to be paid. The Respondent does not ask that the Tribunal take its financial means into account.

39. In respect of rule 74(2)(a), the Tribunal should consider the nature, gravity and effect of the conduct that is alleged to have been unreasonable, though not as though it were applying a checklist. In **Barnsley Metropolitan Borough Council v Yerrakalva [2011] EWCA Civ 1255**, the Court of Appeal made clear that it is necessary to look at the whole picture of what happened in the case and ask whether there has been unreasonable conduct. The Tribunal must identify that conduct, what was unreasonable about it and what effects it had. As to this last point, which is concerned with causation, it is not necessary to find a precise link between the unreasonable conduct and the costs incurred, but matters of causation must not be ignored altogether.

Analysis

40. As noted above, the first question is whether rule 74(2)(a) was satisfied, the second is whether to exercise the discretion to make a PTO, and the third is, if so, in what amount. It is necessary to take each alleged instance of unreasonable conduct in turn.

Hearing bundles

41. The first is the late provision of hearing bundles, which the Claimant says necessitated – I take it, in each case – having to research what her options were and having to write to the Respondent and the Tribunal. The Claimant says she spent around 16 hours carrying out this work across all three occasions.

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42. The Respondent has not disputed that the bundle for the Preliminary Hearing on 21 October 2024 was sent 7 days later than ordered by EJ Perry. As noted above, he had ordered that all future bundles be provided to the Claimant 14 days before a Hearing. The Respondent is correct that it does not automatically follow that it acted unreasonably, but in its email of 7 October 2026 it does not explain to my satisfaction, or indeed at all, why it was not possible to provide the bundle in the timescale ordered by EJ Perry, when it had more than three months to reconstitute it. In the absence of any explanation for this delay, despite multiple opportunities to provide it, the conduct was without reason and thus can properly be deemed unreasonable.

43. The Respondent cannot be criticised for reshaping the bundle; in fact, it seems that is precisely what was required in view of its decision not to contest disability, not to pursue a strike out application and so on. The Claimant would have had to review the new bundle and compare it with the old in any event. The Claimant did however have to write to the Respondent and to the Tribunal because the bundle was late, which no doubt necessitated researching her options as she says. That work would not have been required had the Respondent done what it should have.

44. The Respondent was represented by a large firm which can be taken to be highly experienced in employment tribunal litigation. They knew they were dealing with an inexperienced litigant-in-person. The Tribunal therefore exercises its discretion to make a PTO. Taking into account her status as a litigant-in-person, her mental ill-health and her limited access to IT equipment, it is reasonable to expect that the Claimant would have spent around 4 hours looking into the matter and preparing correspondence. The Respondent is thus ordered to pay her the sum of £176.

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45. No paper copy bundle was provided for the DRA or Case Management Hearing on 5 September 2025. Although EJ Broughton did not specifically order that a paper copy should be provided, it was clear from what had been said by EJ Perry at the first Hearing that this was required. The Respondent has provided no explanation or reason as to why it did not comply with that Order. It was unreasonable conduct of a party, represented by a large and competent law firm, to ignore or overlook EJ Perry's Order.

46. Its result was less serious than the Claimant contends for, in that the Hearings went ahead and all matters were dealt with. As set out in the findings of fact above however, it is no answer to the Claimant's application for the Respondent to say she had all of the documents, as it can be accepted that she was required to carry out some work that would otherwise have been unnecessary to ensure that everything was in order and that she could participate effectively in the Hearing. It is appropriate to exercise the discretion to make a PTO accordingly.

47. There is no evidence of the Claimant raising this with the Tribunal, unlike in October 2024, and therefore the work in question was the compilation of documents into a paper bundle. Acknowledging her circumstances as outlined above, it can sensibly be said that this required a couple of hours of work. The Respondent is thus ordered to pay her the further sum of £88.

Final Hearing bundle

48. The Final Hearing bundle was provided 14 days late, though still well ahead of the Final Hearing getting underway. The explanation the Respondent has provided as to how this came about is satisfactory. Preparations for a Final Hearing can be complex and do not always run smoothly, and there were disclosure delays on both sides. No unreasonable conduct is evident in this regard. I have not been shown any correspondence from the Claimant to the Tribunal about the initial late provision of the bundle, all the work of reviewing it would have been required anyway, and so in any event it would not have been appropriate to exercise the Tribunal's discretion to make a PTO.

49. As to the provision of the further bundle on around 25 June 2025, again I am not satisfied that the Claimant has established that the Respondent conducted itself unreasonably in this regard. It is far from unusual for new documents to emerge during the process of compiling witness statements and at other points in preparing for a final hearing. This is shown by the fact that the Claimant herself provided further material at an even later date, albeit apparently not of an equivalent volume. Of course, getting a revised bundle was difficult for the Claimant to deal with and she did write to the Tribunal about it, but that of itself is not sufficient to cross the threshold of establishing unreasonableness on the Respondent's part in this regard.

Witness statements

50. The second instance of alleged unreasonable conduct is that on or around 31 July 2025 the Respondent provided its witness statements which EJ Broughton had ordered should be exchanged by 4 July 2025.

51. The Respondent has provided a satisfactory explanation for the late exchange; again, whilst of course Tribunal Orders are made to be complied with, it is well known that difficulties and delays can arise, particularly with a complex case such as this was. It does not follow simply from failure to comply with a deadline given by the Tribunal that there are grounds for a PTO to be made. Even as a litigant-in-person, with a month to go before the DRA and more than three months before the Final Hearing, it is difficult to see why the Claimant did not agree to the Respondent's request for a short extension of time. What the Respondent did in this regard was not unreasonable conduct.

52. In any event, the Respondent is entirely correct that the work the Claimant had to do as a result would have been required in any event, in essence considering the statements and preparing cross-examination questions. Accordingly, even if the threshold of establishing unreasonable conduct had been surmounted, it would not have been appropriate to exercise the Tribunal's discretion to make a PTO.

Mr Cooper

53. The third instance of alleged unreasonable conduct concerns the refusal to disclose the documents related to Mr Cooper's disciplinary case. I agree with the Respondent that it by no means follows from EJ Wedderspoon's Order for disclosure that it acted unreasonably in refusing to disclose the two documents in question. The Respondent could properly conclude from the matters which the Claimant relied on for her unfair constructive dismissal complaint that the disciplinary action taken against Mr Cooper was not relevant to any of them. The same is true of the protected disclosure detriment and various disability discrimination complaints.

54. EJ Wedderspoon found that the relevant complaint was whether the Respondent harassed the Claimant related to disability or victimised her by not taking her complaint about Mr Cooper's conduct seriously. It was in my judgment open to the Respondent to contest whether the documents were relevant to those complaints, given that it is not suggested that how the Respondent dealt with the Claimant's grievance per se had not been the subject of full disclosure. The Order was made, but there is nothing in EJ Wedderspoon's decision to indicate that she

considered the Respondent's opposition to disclosure to be in some sense untoward.

55. There was no unreasonable conduct on the part of the Respondent in this respect and thus no basis on which to make a PTO.

Witnesses

56. The fourth instance of alleged unreasonable conduct was the late addition of Mr Cooper and Ms Kwarteng as Respondent witnesses. I cannot see how the Respondent can be said to have acted unreasonably in this regard for the following reasons:

56.1. It is for each party to decide who to call as witnesses. If a party's case lacks important evidence as a result, that is a risk it is entitled to take.

56.2. In any event, the witnesses were called late because the Respondent only discovered on day 1 of the Final Hearing who was alleged to have made harassing comments towards the Claimant – see paragraph 5 of the Written Reasons for the Liability Judgment and paragraph 11.1.2 of the List of Issues annexed to EJ Broughton's Orders dated 21 October 2024.

56.3. As the Respondent points out, even taking account of the Claimant's status as a litigant in person with anxiety and depression, I have to note that she consented to the witnesses being called and to Mr Cooper having opportunity to address the additional question of his altercation with the Claimant.

57. Even if there had been unreasonable conduct, as the Respondent also points out the work the Claimant was required to undertake as a result would have been necessary even had the two statements been provided well before the Hearing. It is regrettable that she had to spend time preparing cross-examination questions during the course of the Hearing itself, and I am in no doubt this was difficult for her, but as my summary of the law makes clear, PTOs are intended to compensate a party for work they were required to do that would not have been necessary if the other party had acted reasonably. That is not the case in this instance.

58. The fifth instance of alleged unreasonable conduct was the calling of Ms Sumner to give evidence at the Remedy Hearing as to what action she would have taken had she chaired a disciplinary hearing for the Claimant. It is not entirely clear why the Respondent did not call Ms Sumner as a witness for the Hearing in November 2025 which was arranged to deal with both liability and remedy issues. That said, first, it is as I have indicated for a party to decide who to call in support of its case; and secondly, once the liability decision was announced and a separate Remedy Hearing arranged, it was entirely proper of the Respondent to call Ms Sumner on this point. I can see nothing unreasonable in its conduct in this regard.

Respondent's cross-examination and submissions

59. The sixth instance of alleged unreasonable conduct was the references in cross-examination of the Claimant and the Respondent's written submissions to her being "hypersensitive" and "paranoid", which the Claimant says necessitated her completely rewriting her own closing submissions.

60. There were several such references in cross-examination to the Claimant being hypersensitive and two in the Respondent's written submissions. I have found none that suggested she was paranoid. Perhaps it would have been better if Ms Clayton had avoided using the term "hypersensitive", but there was nothing that can be said to have been unreasonable in the manner by which Ms Clayton put her questions, including these questions, over two and a half days of cross-examination – we would have intervened if there had been – and the questions themselves were not an improper way to challenge the Claimant's case. Sometimes litigants have to face questions they would rather not have put to them.

61. In any event, it cannot be accepted that this small number of questions, out of hundreds of questions put to the Claimant over two and a half days and two brief references in written submissions totalling 46 pages, were the reason why she had to spend so long preparing her submissions overnight. There was a lot of evidence for both parties to review and extensive Respondent submissions for the Claimant to consider. That is what would properly account for her extensive preparation time, so that even if the Respondent's conduct in this respect had been unreasonable, it would not have been appropriate to exercise the Tribunal's discretion to make a PTO.

Remedy Hearing

62. The final instance of alleged unreasonable conduct concerns evidence which the Claimant says emerged late in the day that the Respondent had not followed its disciplinary policy. Whilst not entirely clear from the Claimant's submissions, this can only refer to it transpiring during the Remedy Hearing that Ms Sumner had issued a sanction to Mr Cooper that was less than was properly open to her under the Respondent's disciplinary policy – see paragraph 23 of the Reserved Remedy Judgment. I cannot see either how that constituted unreasonable conduct of the Tribunal proceedings or how what Ms Sumner said occasioned any extra work for the Claimant given that she dealt with it during the Remedy Hearing itself, which lasted no longer than the full day for which it was listed.

Summary

63. The Claimant's application for a PTO succeeds in part, so that the Respondent is ordered to pay her the sum of £264.

64. This Judgment has been approved by Mrs Hill and Mr Simpson.

Employment Judge Faulkner
Approved on: 20 October 2026

Note

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the parties in a case.