EMPLOYMENT TRIBUNALS

Claimant:	**Cassie Langford**
Respondent:	**AECOM Limited**
Heard at:	**Exeter Employment Tribunal**
On:	**14 October 2026**
Before:	**Employment Judge Volkmer**
Representation	
Claimant:	in person
Respondent:	Simon Tibbits, Counsel Lucy White, Solicitor

RESERVED COSTS JUDGMENT

The Claimant is ordered to pay the Respondent's costs in the sum of £4,500.

REASONS

Background

1. By a claim form presented on 17 March 2025 the Claimant brought claims of whistleblowing detriment, direct perceived disability discrimination, harassment related to age and accrued but unpaid holiday pay.

2. A preliminary hearing took place before Employment Judge Dawson on 3 October 2025, and the case management order, including the List of Issues to be determined in the claim, was sent to the parties on 14 October 2025. A further case management hearing took place before Employment Judge Roper on 8 December 2025. He made a deposit order in respect of the Claimant's whistleblowing detriment and harassment related to age complaints. The Claimant paid the relevant deposits.

3. On 23 April 2026 the Claimant wrote to the Tribunal seeking permission to rely on the transcript of a covertly recorded without prejudice conversation (page 69). The Claimant relied on the "unambiguous impropriety" exception saying that:

> "*I contend that the conduct during this conversation went beyond a genuine attempt to settle the dispute and instead amounted to improper and coercive pressure. In particular:*
>
> *• I was informed that the Respondent would "pursue this at all costs"*
> *• I was advised that if I continued to pursue my claim, the Respondent would seek to take legal action against me and pursue costs*
> *• The discussion conveyed that matters would be concluded on the Respondent's terms*
> *• The settlement position was inconsistent during the course of the conversation, including reference to payment of accrued holiday which was subsequently altered or withdrawn, and the suggestion that this would instead be absorbed into alternative arrangements*
> *• A proposed settlement figure (approximately four weeks' pay) was presented which did not appear to represent a clear or genuine attempt to resolve the dispute*
>
> *Taken together, I rely on this conduct as demonstrating pressure which extended beyond legitimate without prejudice negotiations and instead sought to deter me from pursuing my legal rights*." (page 69)

4. The Respondent resisted the application in an email dated 28 April 2026 on the grounds that the matters raised were not factually admitted and, in any event, did not give rise to unambiguous impropriety (page 67). The Respondent asked in this email for a copy of the recording.

5. The final hearing was originally listed to take place from 13 to 15 October 2026 (three days), by CVP. The parties were not able to resolve the dispute regarding the admissibility of the relevant document between themselves. The parties were warned by Employment Judge Livsey on 5 June 2026 that this would give rise to a need to postpone the final hearing.

6. The parties continued to be unable to resolve the matter. On 3 September 2026 Employment Judge Woodhead wrote to the parties pointing out that the Tribunal was not in possession of the disputed transcript and pointed out that judicial resources were stretched and there was no capacity to deal with the matter on the papers or a hearing before the final hearing. The parties were asked to comment on vacating and relisting the final hearing which would lead to a substantial delay. The Claimant confirmed that she wanted to pursue the application on 14 September 2026 and again on 1 October 2026.

7. Employment Judge Self vacated the hearing by notice sent to the parties on 6 October 2026 and ordered the Claimant to provide the recording and transcript to the Respondent forthwith.

8. The Claimant wrote a lengthy email on 6 October 2026 (page 77) raising further matters regarding, among other things:

a. her witness statement which contained references to ACAS discussions which she also wanted to rely on by referring to it in paragraphs 5.1 to 5.3 of her witness statement;

b. saying that she "intended to question" individuals on the Respondent's cast list: John O'Regan, Jo Pitman, Sinead Cahill who were already on the "cast list" however not being called as witnesses by the Respondent;

c. requesting witness orders for a further two individuals who work for the Respondent: Carol Mastoris and David Armstrong

9. In the hearing I found that the conversation contained in the transcript of covert recording made on 8 April 2025 fell far short of falling within the "unambiguous impropriety" exception to the without prejudice rule.

10. The Respondent made an application for its wasted costs of the vacated final hearing amounting to £4,500 which related to counsel's brief fee only, although the Respondent's position was that approximately a further £5,000 of costs had been incurred in dealing with the Claimant's application.

11. Page references are to the Preliminary Hearing bundle comprising 126 PDF pages.

The Costs Application

12. The Respondent made its costs application based on the following submissions.
    a. The Claimant's application(s) had caused the final hearing to be postponed and wasted cost to be incurred.
    b. The Claimant's conduct specifically and solely relating to those applications has been at the very least 'unreasonable' and comprises of the following:
        i. the covertly recorded the conversation in the full knowledge it was intended to be without prejudice;
        ii. the recording has been in the Claimant's possession since 8 April 2025, and she did not raise it at either of the two previous preliminary hearings;
        iii. the Claimant did not disclose the recording until 6 October 2026, despite the general disclosure obligation and the Respondent's requests to disclose it on 16 and 28 April 2026;
        iv. the Claimant did not disclose the recording or any transcript even when making the application on 23 April 2026;
        v. the application was first made a year after the conversation, and therefore the Claimant had plenty of time to take legal advice (free or otherwise) and at the very least adequate time to undertake internet research;
        vi. there is evidence that the Claimant had at least some awareness of the principles involved at time of first raising her application and the high threshold for such an application given her reference therein to 'I rely on the exception of unambiguous impropriety' and 'the conduct during this conversation went beyond a genuine attempt to settle the matter and instead amounted to improper and coercive pressure' and 'as recognised in relevant case law';

vii. the application itself is and always was wholly misconceived and without any merit;

viii. the Respondent set out its objection to the application almost six months before this hearing on 28 April 2026, highlighting the high threshold for unambiguous impropriety and cited authority in support, including addressing the Claimant's points specifically and reserved the Respondent's right to bring that correspondence to the attention of the tribunal. The Respondent's position is that at the very latest the Claimant should have been aware that her application was without merit at this point. Nevertheless, the Claimant pursued the application;

ix. on 14 September 2026, the Claimant emailed the Tribunal stating that the recording was 'extremely important to my case' and confirmed that she still wanted to rely on and adduce that conversation as evidence at the final hearing. The Respondent's position is that it is not relevant and that this was a gross overstatement

x. the Claimant made a raft of further applications on 1 and repeated on 6 October 2026 which the Respondent avers are wholly without merit and that the timing of such applications, at the last moment before a final hearing, remains wholly unexplained and would appear on its face wholly unreasonable. There is no explanation why (for example) such could not have been raised at the hearing in December 2025 when there was discussion about prospective witnesses or (at very least) upon exchange of witness statements in May 2026.

The Facts

13. The Claimant herself concedes that she was aware that the conversation was intended to be without prejudice and that it was recorded covertly. She has been in possession of it since April 2025 and made no submissions about why she had not made the application at either of the earlier preliminary hearings.

14. It is clear that the Respondent requested a copy of all covert recording on 16 April 2026 (page 99) and of the specific recording on 28 April 2026 (page 67). Employment Judge Woodhead's letter of 3 September 2026 also pointed out the Claimant's failure to provide the transcript/recording.

15. The Claimant was unable to explain why the recording was not disclosed until 6 October 2026, stating in response to my query that she did not know it could be relied on. When asked she still did not disclose it with or after making the April 2026 application to rely on it, her response was "*I didn't think of it*".

16. The Claimant stated in submissions that she was "unsure" if she could rely on the recording/transcript, that she was a litigant in person but had researched the point before making her application.

17. In relation to the Claimant's ability to pay, she was asked to consider this during the break when the judge was deliberating regarding her application regarding the without prejudice document (one hour). Following that break, she informed the Tribunal that she earns approximately £4,000 per month. She lives with a

friend whom she pays £1,500 for rent which includes all bills. Other monthly costs are storage £100, car £200 and food £300. She has approximately £1,900 left per month. However, she told the Tribunal that she was working on a contract basis, and that it may come to an end at any time because it depends on the completion of a project.

The Law

18. Rule 40 of The Employment Tribunal Procedure Rules 2024 (the "Tribunal Rules") provides:

40(7) If the Tribunal following the making of a deposit order decides the specific allegation or argument against the depositor for substantially the reasons given in the deposit order—
(a) the depositor must be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 74 (when a costs order or a preparation time order may or must be made), unless the contrary is shown, and
(b) the deposit must be paid to the other party (or, if there is more than one, to such other party or parties as the Tribunal orders), otherwise the deposit must be refunded.
(8) If a deposit has been paid to a party under paragraph (7)(b) and a costs order or preparation time order has been made against the depositor in favour of the party who received the deposit, the amount of the deposit must count towards the settlement of that order.

19. Rules 73 to 76 and 82 of the Tribunal Rules deal with costs as follows:

Costs orders and preparation time orders
73.— (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
…

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

Procedure
75.— (1) A party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties.
(2) The Tribunal must not make a costs order or a preparation time order against a party unless that party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order).

The amount of a costs order
76.— (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(33), or by the Tribunal applying the same principles;

Ability to pay
82. 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.

20. Costs awards in Employment Tribunal proceedings are the exception rather than the rule (*Gee v Shell UK Ltd [2003] IRLR 82*).

21. *Milan v Capsticks Solicitors LLP & Others UKEAT/0093/14/RN* sets out a structured approach to be taken in relation to an application for costs where the then President of the EAT, Langstaff J, described the exercise to be undertaken by the Tribunal as a 3-stage exercise at paragraphs 52:

"*There are thus three stages to the process of determining upon a costs order in a particular amount. First, the tribunal must be of the opinion that the paying party has behaved in a manner referred to in [Rule 76]; but if of that opinion, does not have to make a costs order. It has still to decide whether, as a second stage, it is "appropriate" to do so. In reaching that decision it may take account of the ability of the paying party to pay. Having decided that there should be a costs order in some amount, the third stage is to determine what that amount should be. Here, covered by Rule [78], the tribunal has the option of ordering*

the paying party to pay an amount to be determined by way of detailed assessment in a county court."

22. In *Mr M Willis v 1) GWB Harthills LLP 2) Miss Hester Russell 3) Mrs Elizabeth Lord: [2025] EAT 79* HHJ Tayler explained the relevance of financial means when applying the relevant rules. The reference to Rule 84 is a reference to the preceding Employment Tribunal Rules and can be applied to Rule 82.

"*6. The application of these rules can be split into three stages:*
Stage 1: is there conduct that could warrant making a costs order ("threshold conduct")
Stage 2: if so, should an award of costs be made ("the discretionary decision") – the Employment Tribunal may have regard to ability to pay at this stage
Stage 3: if so, what amount of costs should be awarded ("the quantum decision") – the Employment Tribunal may also have regard to ability to pay at this stage

7. At stage 2 a wide range of factors can be relevant, such as the party's subjective belief in the merits of a complaint or defence, the type of complaint and whether the party had the benefit of legal advice. Rule 84 gives the Employment Tribunal the power to have regard to the paying party's ability to pay as part of the Stage 2 discretionary decision. An Employment Tribunal might conclude where a party is guilty of threshold conduct, and there are no other factors pointing against making a costs order, that a party's total inability to pay is such that no costs order should be made. In other cases, the Employment Tribunal might decide it is appropriate to make a costs order but take account of the party's ability to pay in limiting the award when making the Stage 3 quantum decision."

Unreasonable Conduct

23. The EAT decided in *Dyer v Secretary of State for Employment EAT 183/83* that "unreasonable" has its ordinary English meaning and is not to be interpreted as if it means something similar to "vexatious". It will often be the case, however, that a Tribunal will find a party's conduct to be both vexatious and unreasonable. Whether conduct is unreasonable is a matter of fact for the Tribunal to decide. It can include pursuing an unmeritorious claim: *Keskar v Governors of All Saints CofE School [1991] ICR 493*.

24. In *Yerrakalva v Barnsley Metropolitan Borough Council and another [2012] ICR 420*, CA Lord Justice Mummery held:

"*The vital point in exercising the discretion to order costs is to look at the whole picture of what happened in the case and ask whether there was unreasonable conduct by the Claimant in bringing and conducting the case and, in doing so, identify the conduct, what was unreasonable about it and what effects it had."*

25. In *AQ Ltd v Holden UKEAT/0021/12/CEA* His Honour Judge Richardson stated that a Tribunal cannot and should not judge a litigant in person by the standards of a professional representative. Justice requires that Tribunals do not apply professional standards to lay people, who may be involved in legal proceedings for the only time in their life. Tribunals must bear this in mind when assessing

the threshold tests. Even if the threshold tests for an order for costs are met, the Tribunal must exercise its discretion having regard to all the circumstances and it is not irrelevant that a lay person may have brought proceedings with little or no access to specialist help or advice. However, Judge Richardson said in paragraph 33:

"*This is not to say that lay people are immune from orders for costs: far from it, as the cases make clear. Some litigants in person are found to have behaved vexatiously or unreasonably even when proper allowance is made for their inexperience and lack of objecti*vity."

26. In *Barton v Wright Hassall LLP [2018] 1 WLR 1119 UKSC* the Supreme Court made the following comments in a case concerning litigation covered by the Civil Procedure Rules.

"*I start with Mr Barton's status as a litigant in person. In current circumstances any court will appreciate that litigating in person is not always a matter of choice. ... Their lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court…. The rules provide a framework within which to balance the interest of both sides. That balance is inevitably disturbed if an unrepresented litigant is entitled to greater indulgence in complying with them than his represented opponent. Any advantage enjoyed by a litigant in person imposes a corresponding disadvantage on the other side, which may be significant if it affects the latter's legal rights, under the Limitation Acts for example. Unless the rules and practice directions are particularly inaccessible or obscure, it is reasonable to expect a litigant in person to familiarise himself with the rules which apply to any step which he is about to take*." [18]

27. Similarly, in *Vaughan v London Borough of Lewisham & Ors (No. 2) [2013] IRLR 713*, the EAT declined to interfere with a substantial costs order against an unrepresented party. Underhill J observed that "*the basis on which the costs threshold was crossed was not any conduct which could readily be attributed to the appellant's lack of experience as a litigant*" [25].

Ability to Pay

28. In *Vaughan* the EAT upheld the award of costs made on the basis that at the time of the hearing the Claimant was not in a position to make any substantial payment, but the Employment Tribunal had taken the view that "*that there was a realistic prospect that she might be able to do so in due course, when her health improved and she was able to resume employment*" [26].

29. The EAT in *Chadburn v Doncaster and Bassetlaw Hospital NHS Foundation Trust and anor EAT/0259/14* the EAT stated that, "*[the Claimant] is only 39, after all. On that basis alone, in my judgment, the Tribunal was entitled to conclude that there was a realistic possibility of an improvement in the*

Claimant's financial position in future such as to justify an award of costs here." [17]

No reasonable prospects of success

30. In the case of *Radia v Jefferies International Ltd UKEAT/0007/18*, the EAT gave guidance in relation to the approach to this test as follows.

"*I should say something further about how the Employment Tribunal should approach an application seeking the whole costs of the litigation, on the basis that the claim "had no reasonable prospects of success" from the outset. It should first, at stage 1, consider whether that was, objectively, the position, when the claim was begun. If so, then at stage 2 the Tribunal will usually need to consider whether, at that time, the complainant knew this to be the case, or at least reasonably ought to have known it. When considering these questions, the Tribunal must be careful not to be influenced by the hindsight of taking account of things that were not, and could not have reasonably been, known at the start of the litigation. However, it may have regard to any evidence or information that is available to it when it considers these questions, and which casts light on what was, or could reasonably, have been known, at the start of the litigation*." [65]

Discretion

31. In *Oni v UNISON 2015 ICR D17, EAT* Simler LJ set out six principles for the exercise of discretion in relation to costs applications as follows (paragraphs 16 to 20).
    a. Firstly, costs applications warrant appropriately detailed and reasoned consideration and conclusion.
    b. Secondly, costs are compensatory and not punitive.
    c. Thirdly, the fact that a party is unrepresented is a relevant consideration.
    d. Fourthly, the means of a paying party in any costs award may be considered twice: first, in considering whether to make an award of costs; secondly, if an award is to be made in deciding how much should be awarded.
    e. Fifthly, there is no requirement that the costs awarded must be found to have been caused by or attributable to the unreasonable conduct found though causation is not irrelevant. What is required is for the tribunal to look at the whole picture of what happened in the case and to identify the conduct; what was unreasonable about the conduct and its gravity, and what effects that unreasonable conduct had on the proceedings.
    f. Sixthly the broad discretion a tribunal has in making an award of costs must be exercised judicially and reasons ought to be given.

Discussion and conclusions

32. There are three stages to be applied:
    a. finding whether the Claimant has behaved in a manner referred to in Rule 74;
    b. if so, considering whether I should exercise my discretion in making such an order; and

c. if so, considering the amount of the award and form of the award.

Whether the Claimant has behaved in a manner referred to in Rule 74

33. I find that the Claimant has acted unreasonably in the following respects:
    a. I consider that the Claimant's application to rely on the without prejudice recording/transcript was wholly without merit. There was nothing at all unusual or anything which was said by Ms Cahill which can be objectively described as improper, even by a lay person. The Claimant researched for her application, which even if it was AI generated, indicated that she understood that the conversation would be inadmissible if covered by the without prejudice rule and had to fall within the exception of "unambiguous impropriety" in order to be admissible. The Claimant should have known from the time of making the application, that it was hopeless. A such making the application was unreasonable;
    b. the Respondent's letter of 28 April 2026 made clear the high bar required for unambiguous impropriety and provided case references, which the Claimant could and should have considered at that time and withdrawn the application. Continuing to pursue the application was unreasonable;
    c. it was unreasonable for the Claimant not to disclose the recording/transcript to the Respondent, at the very latest by the time that she made the application on 23 April 2026. She was asked repeatedly by the Respondent to disclose it, and this was evidently covered by her disclosure obligations. Withholding the recording until 6 October 2026 was unreasonable and she could give no good reason for doing so.

34. Therefore, the Claimant has behaved in a manner referred to in Rule 74(2)(a).

Whether I should exercise my discretion in making such an order

35. Having found that some of the conduct on behalf of the Claimant was unreasonable, there is no requirement for this Tribunal to award costs. I am still required to address my mind to whether I should exercise my discretion in awarding costs in this matter. In other words, I must decide whether it is just to exercise the power to award costs. There are a number of factors to consider, including the nature, gravity and effect of the unreasonable conduct, although there is no principle that costs should only be awarded where they can be shown to have been incurred by specific instances of unreasonableness.

36. The effect of the Claimant's pursuit of this application was that the final hearing had to be vacated. If she had not done so, it could have gone ahead. This has now been re-listed for July 2027, creating significant delay and additional cost for the Respondent of at least £9,500 (£4,500 in respect of brief fees, £5,000 in respect of solicitor's fees).

37. Even though the Claimant is a litigant in person, she was aware of her duty of disclosure, she was not able to give a credible response to why she did not disclose the transcript/recording despite numerous requests to do so. This put the Respondent at a disadvantage in relation to her application and the non-

disclosure appears to be deliberate given the express requests made by the Repsondent for disclosure.

38. The Claimant's application was totally without merit, and she ought to have been aware of the lack of merits of her application, at the very latest when sent the explanation and case reference by the Respondent on 28 April 2025. Even as a litigant in person, or any lay person who has not done legal research, it is clear that this was an unremarkable settlement discussion: there cannot objectively be said to be any impropriety by Ms Cahill based on the content of the transcript, much less "unambiguous impropriety".

39. The Claimant not only pursued this application when it was totally without merit, she also did so in the knowledge that the effect of pursuing the application would be that the final hearing would need to be vacated. The fact that it has been vacated has caused significant disruption to the proceedings, creating delay and putting additional strain on the Tribunal's already stretched resources. This has an effect on other Tribunal users who then experience delays in having their cases heard. Clearly, it also has an effect for the Respondent in relation to the delay in having the case brought to a conclusion.

40. In deciding whether costs should be awarded, I am permitted to take into account the Claimant's ability to pay. The Claimant has around £1,900 of income left over each month after paying her bills. Whilst the Claimant has emphasised that this contract may come to an end, she did not give any indication of when that might be. The Claimant would be able to pay the award from her spare income within three months. Further the Claimant is only 42 and there is no reason which has been put before the Tribunal from which I could conclude that she could not obtain similarly paid employment within a reasonable period of time if the contract did come to an end.

41. Looking at all the evidence in the round, I find that is just to award costs in this matter to take into account the conduct outlined above.

Considering the amount of the award and form of the award

42. The basic principle is that the purpose of an award of costs is to compensate the party in whose favour the order is made, not to punish the party ordered to pay the costs.

43. I take into account the ability to pay at this stage and repeat paragraph 40 above. The Claimant's left-over income of £1,900 per month means that she could comfortably pay the amount requested by the Respondent within three months.

44. Given the nature of the findings of unreasonableness when considered in the context of the case overall, I make an award of costs in the sum of £4,500 requested by the Respondent. These are the wasted brief fees incurred by the Respondent and less than half of the additional fees incurred as a result of the application being pursued and the final hearing being vacated.

Approved by Employment Judge Volkmer

14 October 2026

JUDGMENT & REASONS SENT TO THE PARTIES ON
11th November 2026
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Simon Fraser
.....
FOR THE TRIBUNAL OFFICE