EMPLOYMENT TRIBUNALS

Claimant: Ms R Meade

Respondent: Westminster City Council (1)
Social Work England (2)

Sitting at: London Central **On:** 4th July 2023

Before: Employment Judge Nicklin

JUDGMENT ON COSTS APPLICATION

The Claimant's application dated 14th April 2023 for a costs order against both Respondents in respect of the applications to strike out the claims and against the First Respondent in respect of its Rule 50 application, all heard on 11th April 2023, is dismissed.

REASONS

The application and the mode of determination

1. At a preliminary hearing held in public on 11th April 2023, the tribunal heard and dismissed two applications to strike out the second claim (2211483/22 – "the Second Claim") brought by the Claimant in these proceedings and presented on 16th December 2022. The tribunal also heard a Rule 50 application made by the First Respondent and granted this in part only.

2. By a written application dated 14th April 2023, the Claimant applied under Rule 76(1)(a) of the tribunal's Rules of Procedure for an order for costs against both Respondents in respect of these applications (howsoever apportioned as between them), on the footing that the making of these applications amounted to unreasonable conduct. I gave directions to the parties to provide written submissions in reply to the application and I also directed the parties to confirm whether they consented to the application being decided on the papers (i.e without a hearing). That process, via correspondence, took until 7th June 2023 and it was

only after that date that I had all of the necessary information in order to proceed to determine this application.

3. The Claimant and First Respondent both consented to a determination of the application on the papers. However, if I determined that a costs order should be made, the First Respondent requested an itemised schedule of the costs claimed by the Claimant. The Second Respondent confirmed by an email of 7th June 2023 that it would prefer that the application were considered at the conclusion of the final hearing and, otherwise, it accepted that a paper determination was appropriate. I considered that request but decided that it was not in accordance with the overriding objective to expect a differently constituted tribunal to determine a costs application arising from interim applications heard by another tribunal. As there was no request for a separate costs hearing to be listed before me, I proceeded to determine the application on the papers.

4. In the circumstances, I have determined this application as soon as possible after the receipt of final replies from the parties on 7th June 2023. However, I apologise to the parties for any delay in providing this decision since that date.

Background to application

5. The Claimant is a social worker. By a claim form presented on 7th January 2022 (the First Claim), the Claimant brought claims of direct discrimination, indirect discrimination and harassment against her employer, the First Respondent and her regulator, the Second Respondent. The indirect discrimination claim has now been withdrawn. The Claimant was employed by the First Respondent since around August 2001 and the First Claim concerns a fitness to practice investigation in respect of posts found on Facebook concerning the Claimant's gender critical beliefs and her alleged involvement in petitions or donations which were said by the Respondents to be discriminatory and/or offensive to others. The First Claim also concerns the Claimant's suspension and a disciplinary process instigated by the First Respondent.

6. There was a case management hearing on 29th March 2022 and the First Claim was listed for a 6-day final hearing to take place from 1st December 2022 (that hearing was ultimately vacated by the tribunal and the Claimant proceeded to issue her Second Claim very shortly thereafter on 16th December 2022). At this first case management hearing, the Respondents had raised the question of whether the Claimant might have possible amendments to the claim.

7. On or around 8th July 2022, the Claimant was given a final written warning by the First Respondent and on 12th July 2022 her suspension was lifted. This sanction was ultimately rescinded by the First Respondent following an internal appeal, the outcome of which was reported on 15th November 2022. The Second Respondent discontinued its fitness to practice process on 17th October 2022.

8. On 26th August 2022, the First Respondent had applied for the postponement of the final hearing in light of its concerns that the Claimant might amend the claim, but this was refused by EJ Baty on the basis that no such application to amend the claim had been made.

9. In the event, on 30th November 2022, the day before the final hearing, the tribunal vacated the listing for lack of judicial availability. The hearing was relisted to 5th July 2023 for 6 days with a notice of hearing sent out on 7th December 2022. On 16th December 2022, the Claimant then presented the Second Claim. This claim concerns the events occurring after 7th January 2022, leading up to the appeal outcome letter dated 15th November 2022.

The Applications

Strike Out

10. The First Respondent's application was to strike out the Second Claim on the basis that it had no reasonable prospect of success ("Application 1"). The Second Respondent's application, supported by the First Respondent, was to strike out the Second Claim on the basis that it was an abuse of process ("Application 2").

11. The basis of Application 1, at the hearing, was that there was said to be no reasonable prospect of success in establishing that the 15th November 2022 letter (rescinding the final written warning) could be found to be an act of discrimination. If that is right, the First Respondent contended that the earlier allegations in the Second Claim were presented out of time and there was no reasonable prospect of time being extended.

12. I dismissed that application. The First Respondent maintained that the final written warning could not be detrimental because the Claimant was left in a better position as a result. The Claimant said that it could amount to a detriment in the context of previous findings, the suspension and the treatment the Claimant alleges in respect of the First Respondent during the course of the process. The Claimant pointed to the reference in the letter to two posts being considered as 'beyond the line'. As they were only shared in a private group and nothing else had been shared in two years there was no sufficient reason to uphold the sanction. The Claimant contended that the Claimant's silence had effectively been treated as her mitigation giving rise to the rescission of the sanction which, it was submitted, had a chilling effect on the outcome notwithstanding that the sanction has fallen away. This is a pleaded issue; the Claimant says that the letter amounts to a restraint on freedom of expression in circumstances where the Claimant's protected characteristic is her belief.

13. I decided that the Claimant's argument about this letter clearly had reasonable prospects and was an issue properly for evidence at final hearing. On this basis I considered that there was a live 'continuing act' point in respect of any earlier matters in the Second Claim.

14. Application 2 raised the question of abuse of process. This argument was advanced by the Second Respondent on the basis of the principle enunciated by the House of Lords in *Johnson v Gore Wood & Co* [2002] 2 AC 1 that, if the party alleging abuse can show that the matters giving rise to the bringing of a claim in later proceedings should have been raised in earlier proceedings, it may, without more, amount to an abuse. It was common ground that the law requires the tribunal to take a broad merits-based approach, taking into account all the relevant circumstances.

15. I was therefore required to consider whether the substance of the Second Claim (with the events running as they did up to the appeal outcome letter of 15th November 2022, one month before the Second Claim was brought) should have been brought in the First Claim. The First Claim is, of course, live and at the time of hearing the application the parties were awaiting final hearing starting on 5th July 2023. The Claimant issued the Second Claim because the cost/benefit analysis of issuing another ET1 had changed as a result of the tribunal having vacated the hearing listed on 1st December 2022.

16. The Respondents contended that the Claimant should have brought the earliest matters (events in January and February 2022) forward at the case management hearing on 29th March 2022 by way of an application to amend. Secondly, the Respondents contended that the First Respondent's application to postpone the December hearing was another opportunity to bring its amendment application. Reliance was placed on an email from the Claimant's solicitor on 20th September 2022 which referred to the prospect of any application to amend being 'mere speculation', which appeared to be a material consideration relevant to the refusal of the application to postpone. Thirdly, witness statements had been exchanged on 25th November 2022; there had still not been an application to amend and some of the matters in the Second Claim appeared in the Claimant's witness evidence.

17. I dismissed Application 2. I accepted the Second Respondent's submission that parts of the Second Claim could have been presented by way of an application to amend the First Claim at an earlier stage, but I was not satisfied that the Claimant should have presented the entire Second Claim, as it is pleaded, only by way of amendment. The Claimant was able to present a Second Claim and, where a complaint is raised which is out of time, the Claimant will face the same issues as to time limits as may be relevant on an application to amend. This was not the same as a situation where the first claim had been and gone with a final judgment.

18. I considered that some of the matters relied on the Second Claim occurred only shortly before the December final hearing, as listed. If it were the case that the Claimant should have applied to amend at that stage, the proceedings would have been disrupted by an inevitable postponement (putting aside what actually happened to the hearing in the event) and this would have exposed the parties to additional costs. To say that the Claimant should have applied to amend earlier (i.e. in March 2022) does not resolve the later complaints. Taking a broad merits based approach I decided that the later claims were likely to be of value to the Claimant and so a decision to present the Second Claim was clearly made after the Respondents' processes had concluded and in circumstances where the December hearing had been vacated for reasons outside the parties' control. The Second Claim was then presented promptly: just over two weeks after notice that the final hearing had been vacated and just over a week after learning that the relisting would not take place until July 2023. I therefore decided that this was not abusive in the circumstances.

The Rule 50 application

19. This application was made only by the First Respondent and was advanced in two parts, both under Rule 50(3)(b). The first was for an anonymity order concerning the identity of comparators relied on by the First Respondents in the documents,

during the hearing and in any judgment or orders of tribunal. The second part of the application concerned the anonymisation of two junior managers who are to be witnesses for the First Respondent. The original application made by the First Respondent extended to all its witnesses, but this was narrowed during submissions at the hearing.

20. The other parties were neutral as to the first part of the application[1] and, for reasons I gave orally at the hearing, I granted the anonymity order in respect of the First Respondent's comparators.

21. The Second Respondent remained neutral as to the second part of the application. The Claimant opposed this. I refused to make any Rule 50 order in respect of the First Respondent's witnesses for the reasons given orally at the time. In particular, there was no evidence before me to determine the impact on the Article 8 rights of the witnesses in order to apply the relevant test.

Submissions in respect of the costs application

22. I have read all of the written submissions supplied by all three parties. I do not set them all out here for reasons of brevity and relevance, but I have considered all that the parties have said.

23. The Claimant applies for the difference in Counsel's fees between a half day hearing and the full day listed and required to deal with all matters and half of the solicitor's time incurred for the preparatory work for the preliminary hearing. These costs total £6,625 plus VAT. The Claimant submits that:

Rule 50 application

a. the First Respondent acknowledged the difficulties it faced with its application and points out that the First Respondent referred to it as a 'light touch application' and the reduction in scope of the application by the time of the hearing;
b. the original application dated 27th January 2023 (which the tribunal has re-read when considering this application) was not a light touch application;
c. the First Respondent's solicitor effectively accepted at the hearing that its application could not proceed in respect of the senior manager witnesses;
d. the Claimant committed substantial resources into opposing the application in light of the broad scope of the written application;
e. The application, including when more limited in scope (i.e. the two witnesses) was hopeless without evidence in support;
f. The First Respondent's conduct lengthened the hearing in a manner which was unreasonable;

Strike out

g. The Claimant acknowledges that, at first glance, a contention that an appeal outcome letter withdrawing a sanction could not amount to a detriment may have merit. However, in context, this was unsustainable and the First Respondent should not be given credit for being misled by the initial impression. The Claimant says that the penultimate passage of the letter made clear that the Claimant had escaped a sanction very narrowly;

[1] The Claimant contended that the test for anonymisation was not, in principle, met, but the Claimant did not mount an argument to oppose anonymisation of the comparators in the circumstances.

h. Had the tribunal decided that there was no reasonable prospect in the letter amounting to a detriment, the First Respondent's contention that the earlier events should be struck out on the basis of limitation was even weaker given that the Claimant relied on a continuing act which was, manifestly, a process through which the Claimant was being taken in stages;
i. The abuse argument was meritless in circumstances where the Claimant had been candid about her reasons for issuing the Second Claim after the December hearing had been vacated and in circumstances where the disciplinary and regulatory processes had only ended in October and November 2022;
j. As to the exercise of discretion to make an order, the Claimant says it is relevant that the Claimant warned the Second Respondent of her intention to apply for costs in relation to its strike out application and warned the First Respondent in respect of its applications in her letter to the tribunal dated 2nd March 2023. Further, she points out that the Respondents are sophisticated public bodies represented by senior employment lawyers. These were, the Claimant says, weak applications that should not have been made;
k. The tribunal is also asked to take into account, with the Respondents' cases at their highest, the Claimant's long record as a social worker and the chronology of events giving rise to this case (i.e. a public regulatory sanction going back to 8th July 2021).

24. The First Respondent:
    a. The First Respondent points to a number of cases, as cited in its written submissions, which underscore the point that a costs order is exceptional and, accordingly, a high hurdle is to be surmounted;

    Rule 50

    b. The First Respondent points out that the anonymity order sought in respect of the comparators was granted which cannot, therefore, amount to unreasonable conduct;
    c. As to the second limb of the Rule 50 application (the witnesses), the tribunal must find that this was more than simply a weak application. The tribunal must consider the nature, gravity and effect of the applications before establishing unreasonable conduct;
    d. Reference is made to the listing of the application for a public preliminary hearing. The First Respondent says this suggests the applications were not hopeless given they were listed;
    e. The reduction in scope of the application was a reasonable and pragmatic approach and notice was given by skeleton argument the day before the hearing;
    f. The First Respondent proceeded with the application in respect of two witnesses based on instructions that the relevant individuals' mental health had been affected by the process. The First Respondent recognised it needed 'cogent witness evidence of the impact of their Article 8 rights'. The production of that evidence for the hearing would, the First Respondent says, have 'magnified' the issue. The application was therefore a protective measure in circumstances where there was significant public interest;
    g. The whole Rule 50 application took 1 hour out of a 6.5 hour hearing;

h. The Claimant's consent, or otherwise, is irrelevant (as pointed out by the Claimant's counsel during the hearing). Accordingly, the First Respondent says that the Claimant did not need to commit 'substantial resources' to defending the application. The First Respondent considers that this also suggests that the point was at least arguable in any event;

Strike out

i. The First Respondent does not accept that the appeal outcome letter was a complete restraint on the Claimant's freedom of expression. The First Respondent says that the comment made about the posts in the appeal outcome letter was the adjudicating officer's view of two social media posts and should not be confused with the view of the appeal officer;
j. There was no freestanding application to strike out the other acts on the basis of time limits;
k. As to abuse, the First Respondent points out that there is no specific authority on the presentation of a second claim where the first is continuing. It must, therefore, be arguable that presentation of a second claim might amount to abuse in the circumstances;
l. This is not, the First Respondent says, an exceptional situation where conduct was so unreasonable to merit a costs order.

25. The Second Respondent (against which the application can only proceed in respect of its application to strike out on the abuse of process ground):
    a. The Second Respondent says the question as to whether the Claimant should have brought the matters comprising her Second Claim earlier in the First Claim was properly arguable. The authorities do not distinguish between cases where the first action has already concluded and those where it has not;
    b. The Second Respondent points to its previous concerns regarding the risk of potential amendments to the claim. This was raised in September 2022 by both Respondents at a stage when the parties were on an equal footing and preparing their respective cases. At that point, further claims by the Claimant were said to be 'mere speculation'. Matters raised in the Second Claim appeared in the Claimant's witness evidence for the First Claim;
    c. The Second Respondent also says that the Second Claim presented a risk to the new hearing date commencing 5th July (which, in the event, did not materialise because there was scope to extend the listing);
    d. The Claimant's submission that it was a tactical decision whether or not to amend her First Claim at an earlier stage supports the Respondents' case that the abuse argument was properly arguable;
    e. A further preliminary hearing was required, anyway, because of the Claimant's presentation of the Second Claim. This would have given rise to additional cost and expense in any event.

Law

26. Rule 76 of the tribunal's Rules of Procedure provides:

> ***76.***—*(1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, 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) or the way that the proceedings (or part) have been conducted;*
>
> *(b) …*
>
> *(c) …*

27. Rule 77 (procedure) provides:

> ***77.*** *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. No such order may be made unless the paying party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order) in response to the application.*

28. Rule 84 provides as follows (in respect of a party's ability to pay):

> ***84.*** *In deciding whether to make a costs, preparation time, or wasted costs order, and if so in what amount, the Tribunal may have regard to the paying party's (or, where a wasted costs order is made, the representative's) ability to pay.*

29. In determining a costs application on the above ground, there is a two-stage test. Firstly, I must consider whether the statutory threshold is made out (under Rule 76(1)(a)). If I decide that it is, I must go on to exercise my discretion, having regard to all the circumstances, as to whether or not to make a costs order. Where the tribunal finds unreasonable conduct, it does not automatically follow that an order should be made. If an order is to be made, I must then go to determine the amount (see Ayoola v St Christopher's Fellowship, UKEAT/0508/13/BA, 6th June 2014, unreported, per HHJ Eady QC (as she then was)).

30. In Salinas v Bar Stearns International Holdings Inc and another [2005] ICR 1117, Burton J observed, at paragraph 22.3, that: "*This is ordinarily a costs-free jurisdiction and something special or exceptional is required before a costs order will be made, in whole or in part, and even if the necessary requirements…are established, there would still remain a discretion*".

31. In the context of a claim withdrawn by a Claimant, the tribunal must consider whether the party has conducted the proceedings unreasonably in all the circumstances and not whether the late withdrawal was itself unreasonable (McPherson v BNP Paribas (London Branch) [2004] ICR 1398, CA). When considering the question of unreasonable conduct, the tribunal should take into account the '*nature, gravity and effect'* of a party's unreasonable conduct (McPherson) but this does not mean that the tribunal should separate the circumstances into 'sections' to carry out a separate analysis (Yerrakalva v Barnsley Metropolitan Borough Council and another [2012] ICR 420, CA). The tribunal must keep sight of the totality of the circumstances.

32. The fundamental principle of a costs award, if made, is to compensate the party in whose favour the order is made. It is not punitive. However, the tribunal is not required to establish a direct causal link between any unreasonable conduct found and the costs incurred by the conduct (see Yerrakalva). Where the tribunal exercises its discretion to make a costs order, it does not need to carry out a detailed or minute assessment but, instead, adopt a broad-brush approach against the background of the relevant circumstances (Sud v Ealing LBC [2013] ICR D39, per Fulford LJ).

33. The tribunal can take into account ability to pay on the question of whether to make a costs order and also, if appropriate, on the amount.

Discussion and conclusions on the application

34. The tribunal must first consider whether there has been unreasonable conduct in respect of the two bases of the strike out application and the Rule 50 application.

35. As to strike out, I conclude that neither application (i.e. the First Respondent's 'reasonable prospects' application (Application 1) and both Respondents' 'abuse of process' application (Application 2)) amounts to unreasonable conduct. This is because:

    a. In respect of the First Respondent's 'reasonable prospects' application:

        i. there was an arguable point as to whether the appeal outcome letter could properly amount to a detriment given that a disciplinary sanction had been rescinded. The Claimant's response to that application (that the reasons and basis for the decision had a chilling effect on the Claimant's free speech such that it could amount to a detriment for the purposes of her case on discrimination) was a forceful and persuasive one which properly merited consideration of the claim at final hearing.
        ii. However, the fact that the application failed does not mean that the First Respondent's challenge amounts to unreasonable conduct. It was an issue which was carefully considered by the tribunal when examining prospects, particularly as the last event in the chronology.
        iii. The nature, gravity and effect of the First Respondent's conduct in presenting the strike out application on this basis was, in my judgment, reasonable because it was brought on the basis of a live question as to what might amount to a detrimental act. It is not unreasonable to challenge such a claim as it did, within its second ET3 and Grounds of Resistance in this litigation (filed in response to the Second Claim). The application was not opportunistic; it was raised immediately within the First Respondent's response. There is a credible argument to say that the substantive outcome, tone and purpose of the outcome letter may not be an act of discrimination. That is not a matter which I decided in the application (or, of course, decide here). That is a matter for final hearing.

iv. I have had regard to the fact that, the point being arguable, it might be said that it is therefore a matter for final hearing and should not have been the subject of a 'reasonable prospects' application at all. That is a risk a party takes in bringing forward such a challenge in its ET3. However, the First Respondent's position in seeking strike out on this basis, when the other events relied on by the Claimant would otherwise fall be to subject to limitation arguments, does not amount to unreasonable conduct in the circumstances of this case.

b. In respect of the Respondents' abuse of process argument (Application 2):

i. I decided that, amongst other factors, given the First Claim was still live and the Second Claim concerned subsequent, related events occurring after the presentation of the First Claim, the Second Claim was not an abuse of process. It could have been dealt with by amendment but there was no procedural impediment preventing the Claimant from proceeding as she did.

ii. The question the tribunal had to decide was whether the Second Claim matters should have been brought earlier in the First Claim. The Second Claim matters go back to 20th January (against the First Respondent) and 31st January 2022 (against the Second Respondent), around two months before the first case management hearing in the First Claim. There was, in my judgment, a credible argument to be heard as to whether such amendments *should* have been brought forward in the First Claim (which might have been proportionate and in accordance with the overriding objective). The manner in which the Second Claim was presented meant that matters going back to the early case management stages of the First Claim were, upon the December hearing being vacated, coming forward as new allegations after disclosure and witness evidence.

iii. In my judgment, whilst I concluded that this was not an abuse of process and both claims could now be managed to be heard in one extended final hearing, the challenge as to whether these matters should have been brought forward earlier was an arguable one. The Respondents point to correspondence which indicated to them that there was not going to be an amendment to the First Claim (for example, the email of 20th September 2022 from the Claimant's solicitor which confirmed that further claims were a "*matter of mere speculation*"). This was followed by the exchange of witness evidence on 25th November 2022 in which the Claimant's evidence raised matters which had not been the subject of any amendment.

iv. The Claimant has a reasonable explanation as to why these matters were all brought forward in December. The cost/benefit analysis had changed given the final hearing had been vacated. This is a valid and relevant explanation for the Second Claim but it does not, in my judgment, mean that the Respondents' challenge – given that the parties were inevitably going to have conduct a second disclosure exercise and exchange further witness evidence with the attendant costs associated with this further work – is unreasonable conduct in the context of this litigation.

36. In the circumstances, there is no jurisdiction to consider any costs order against the Second Respondent nor any such order against the First Respondent as to its strike out applications.

37. As regards the Rule 50 application made by the First Respondent, the question of unreasonable conduct concerns only the application in respect of the witnesses.

38. I conclude that the presentation and making of this application does amount to unreasonable conduct on the part of the First Respondent. This is because:

    a. There was no evidence to support the application in respect of any witness. It is extremely difficult to see how the tribunal could proceed to positively determine such an application in the absence of any evidence as to the impact on the Article 8 rights of a witness seeking anonymity (or any other protection) under Rule 50.
    b. The application was made in respect of all of its witnesses. Emphasis was placed in the written application on the publicity surrounding the case and that the First Respondent's witnesses would therefore become closely associated with a "*highly emotive legal debate*". This, without more, was a wholly insufficient basis to bring an application of this type.
    c. The First Respondent decided not to proceed with its application in respect of its witnesses, save for two junior managers, the day before the hearing. This was after the Claimant had incurred time and expense in preparing its argument in response. The First Respondent's solicitor, rightly, was candid and realistic about the First Respondent's position in the application at the hearing. However, this was some 2.5 months after advancing it in writing in respect of all witnesses without evidence.
    d. Finally, to have pursued the application in respect of the primary decision makers giving evidence at final hearing was highly unlikely to succeed given the weight of the public interest in the events, decisions and circumstances of a local authority employer.
    e. Given the absence of any evidence and, in the above circumstances, it was unreasonable conduct to have advanced and persisted with the application for Rule 50 orders in respect of the First Respondent's witnesses.

39. I must therefore go on to consider whether or not to make a costs order against the First Respondent in respect of the witnesses' aspect of its Rule 50 application ("the witnesses application"). I have concluded that the tribunal should not make a costs order for the following reasons:

    a. The extent and scope of the application at the hearing. In my judgment, this aspect of the Rule 50 application took a relatively limited amount of time, within the context of a full day's hearing, much of which was devoted to the strike out applications. It was made as part of a broader application under Rule 50, the other aspect of which was successful ("the comparators application"). That is relevant to the exercise of my discretion in this case; the tribunal needed to hear and consider a Rule 50 application which engaged similar principles and relevant cases. There was a consequential overlap as to principles and authorities which needed to be considered in respect of the comparators application, which did not amount to

unreasonable conduct. The overall time and cost implications on the tribunal and other parties as a result of the witnesses application was limited by the consideration of the comparators application.

b. The Claimant was broadly neutral as to the comparators application but, as was common ground at the hearing, her consent was irrelevant as the Rule 50 jurisdiction requires a judicial exercise of discretion based on established principles. Accordingly, the comparators application had to be heard in any event.

c. In the circumstances, whilst I accept that the Claimant applied resources to her response to the application, I do not consider that this factor justifies the making of a costs award in her favour given the significant amount of work required for the hearing which involved other matters. Further, it is relevant that a case management hearing would inevitably have been required at this stage and was indeed sought by the Claimant in her letter to the tribunal of 4th January 2023. Some, but not all, of the cost incurred by the Claimant at this hearing would have been necessary as a result of the Second Claim triggering a second preliminary hearing.

d. I have had regard to the fact that the Claimant warned the other parties as to costs in earlier correspondence. This is a factor which lends support to making a costs order in the circumstances. The Claimant has also pointed to the longevity of the issues giving rise to this litigation and the impact upon her as an established social worker. However, when balanced against the above factors, particularly the other issues heard at the hearing and the successful comparators application, I do not consider that these factors carry so much weight as to make it appropriate to make a costs order.

e. In the circumstances, considering the overriding objective, I do not consider that this is a situation where a costs order should be made.

40. For the above reasons, the application for costs is dismissed.

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Employment Judge Nicklin

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Date: **4th July 2023**

JUDGMENT & REASONS SENT TO THE PARTIES ON

05/07/2023

FOR THE TRIBUNAL OFFICE