EMPLOYMENT TRIBUNALS

Claimant: **Mr M Kumi**

Respondent: **Edwardian Pastoria Hotels Ltd**

PRELIMINARY HEARING

Heard at: London Central **On:** **21 November 2024**

Before: Employment Judge Baty

Representation
Claimant: In person
Respondent: Ms E Banton (counsel)

JUDGMENT

1. The claim is struck out because it is vexatious and scandalous and because the manner in which the proceedings have been conducted by the claimant has been vexatious, scandalous and unreasonable.

2. An award of costs of **£20,000** is made, payable by the claimant to the respondent.

REASONS

Background

The claim

1. The claimant was employed by the respondent from 24 July 2023 until 28 July 2023, at which point he was dismissed by the respondent. He was therefore employed for five days only.

2. The respondent is a company which owns various hotels, at one of which the claimant worked.

3. By a claim form presented to the employment tribunal on 29 November 2023, the claimant brought complaints of unfair dismissal because of making a

protected disclosure, detriment because of making a protected disclosure, direct race discrimination, harassment related to race, and disability discrimination. (There was also an unlawful deduction of wages complaint which was, however, subsequently withdrawn by the claimant and dismissed.)

4. The claimant's particulars of claim attached to his form ET1 comprised a copy of a grievance letter some 27 pages long which had been sent by the claimant to the respondent on 2 October 2023, just over two months after his very short employment had ended. That 27 page grievance contains a lengthy narrative and allegations of breaches of the "Equality Act 2010" and the "ERA". It references language and legal jargon from both of those statutes and, as the extract from it below illustrates, it contains a lot of legal terminology. It then concludes as follows, and I quote the last three paragraphs in full:

"As a result of these issues I would like to formally raise the concerns set out above through grievance in accordance with the company's grievance procedure. The reason for this is to investigate the concerns which I have raised with a view of resolving these issues as soon as possible.

I feel that the working relationship has broken down so without prejudice and subject to contract, I will be looking for a settlement as a way of remedy. Hopefully the business and I can negotiate and reach a mutual agreement (based on terms and conditions) and make an offer if my grievance is successful.

For now I seek £18 k (without prejudice and subject to contract) for these issues. I look forward to receiving an email about your response."

Although the claimant does reference investigating the concerns which he had raised, the overwhelming emphasis in these paragraphs is on negotiating a financial settlement for the claimant rather than resolving alleged illegal workplace practices.

5. The respondent defended the complaints.

<u>April 2024 preliminary hearing</u>

6. A preliminary hearing for case management purposes was held on 17 April 2024 before EJ Walker ("the April preliminary hearing"). At that hearing, EJ Walker, amongst other things, sought to identify and agree the issues of the extensive complaints brought by the claimant.

7. EJ Walker also identified with the parties that, of the five days on which the claimant was employed by the respondent, he was trained and inducted on the first few days. She noted that the matters which were the subject of his claim all appeared to have arisen on the first occasion when the claimant worked a night shift and that the claimant had made a covert recording for about eight hours when on this shift and maintained that he was treated in ways that amounted to discrimination and was eventually dismissed. She noted the respondent's position, which was that it had acted properly and dismissed the claimant because of his behaviour during his probationary period, specifically on that shift.

8. EJ Walker also noted that the respondent maintained that it believed that the claimant had a pattern of behaviour whereby he brought claims after working for very short periods of time, having recorded his co-workers.

9. EJ Walker also noted that the claimant wished to adduce "a few clips" of the 8 hour recording, which he had already sent to the tribunal, and that the respondent was concerned about the admissibility of that recording and the limited nature of the clips. EJ Walker noted that, to facilitate a reasonable review of the matter, she had ordered the claimant *"to deliver a full unedited recording to the respondent so that they can consider their position"*.

10. Amongst the orders which EJ Walker made at the April preliminary hearing, she made an order for specific disclosure in the following terms:

"6. The Claimant must by 8 May 2024 provide the respondent with a full unedited copy of the recording(s) he made during the time he worked for the respondent parts of which he seeks to rely on in these proceedings."

11. Although a lot of time was spent trying to identify the extensive issues of the claim and a draft list of issues was produced, EJ Walker nonetheless needed to list a further preliminary hearing for case management.

July 2024 preliminary hearing

12. That further preliminary hearing was held on 16 July 2024 before EJ Smith ("the July preliminary hearing"). At that hearing, amongst other things, EJ Smith sought to finalise the issues of the claim and those were then set out in a list of issues sent to the parties.

13. That list of issues is extensive. It contains roughly 60 allegations of direct race discrimination alone, against various individuals at the respondent, and these factual allegations are also to varying degrees brought as complaints under other heads of claim as well.

14. In the list of issues, the alleged disability on which the claimant relied was identified as being Type 2 Diabetes. At that stage, the respondent had not conceded that the claimant was a disabled person for the purposes of his disability discrimination complaints.

15. The respondent's response form also contained an application to strike out the claim on various grounds, including that the claim was vexatious and scandalous and that it had no reasonable prospects of success and, in the alternative, for the tribunal to make a deposit order.

16. EJ Smith therefore listed this preliminary hearing in public for 21 and 22 November 2024. He listed it for two days on the basis that one day would consider the respondent's strike out application and the other would consider the issue of whether the claimant was a disabled person for the purposes of his disability discrimination complaints.

17. Although the claimant objected, EJ Smith listed the hearing in person because, at both the April and July preliminary hearings, which were by video, there had been technical difficulties with the claimant's camera which meant that the claimant had only been able to attend by audio.

18. The claimant had made allegations of perjury against the respondent and EJ Smith warned the claimant at the July preliminary hearing that if he made

allegations of perjury on the part of the respondent without a proper basis, this could be considered unreasonable conduct on his part.

19. At the July preliminary hearing, the claimant stated that he was hopeful that he could *"sort something out"* with the respondent. The respondent also indicated to the claimant that, if he wanted to engage in alternative dispute resolution, then he would need to substantially reduce his expectations about his claims, currently valued by him at £27,000 plus an unspecified amount. EJ Smith noted that this may be relevant to any future costs application made by the respondent.

20. From EJ Smith's note of the July preliminary hearing, it was also clear by this stage that there were more recordings which the claimant had covertly taken apart from the eight hour recording referred to at the April preliminary hearing. EJ Smith made various orders in this respect and it is worth quoting those in full:

"**Specific disclosure**

14. The tribunal notes that the claimant did not respond to the respondent's repeated correspondence about the recordings he wanted to rely on. It is noted that this may be unreasonable conduct for the purposes of future applications for costs and or strike out of the claims. The claimant accepted ignoring the correspondence because he felt that he had complied with the previous judge's order. The claimant was expressly warned of the costs and strike out consequences of ignoring the respondent's correspondence in the future.

15. It is ordered that the claimant send to the respondent by 6 August 2024 a full and complete and unedited set of recordings made during the course of his employment at the respondent. This includes the parts that the claimant does not rely on. It was made clear to the claimant that this included everything.

16. This order was made at the request of the respondent because the full content and extent of the recordings must be known by the respondent for a fair hearing to be possible. It is likely to be relevant to any strike out applications made. This is because if the full set of recordings is not disclosed then the context of the comments made, such as any prompting by the claimant, would be unknown.

17. It could also be inferred from the claimant's file naming system that not all recordings had been disclosed to the respondent.

18. In light of the claimant's previous failure to respond to the respondent's reasonable correspondence the claimant must also send to the respondent by 6 August 2024 a witness statement, signed with a statement of truth, confirming that he has provided them with a full and complete and unedited set of recordings that he made during his time at the respondent. The claimant was warned that if he signs a statement of truth without believing the content to be true, there could be other proceedings brought against him.

19. The witness statement must be in the following format:

Claim number 2216798/2023
Mr Martin Kumi v Edwardian Pastoria Hotels Ltd
Witness statement of Mr Martin Kumi
1. I confirm that I have sent to the respondent by email dated [insert date of email] a full and complete and unedited set of all the recordings I made whilst employed by the respondent Edwardian Pastoria Hotels Ltd.

I believe that the facts stated in this witness statement are true.

_____ [signature]
Dated: [insert date]
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20. I declined to make an unless order for compliance with the above order. However, the claimant is warned that if he does not comply with the above order the tribunal may strike out his claims and it may amount to unreasonable conduct such that costs should be awarded against him."

21. Notwithstanding the instruction of EJ Smith that this hearing should be in person, the claimant made a subsequent application to convert the preliminary hearing to a video hearing. This was refused by EJ Glennie on 8 September 2024.

Length of this preliminary hearing

22. On 9 September 2024, the respondent informed the tribunal and the claimant in writing that it conceded that the claimant was a disabled person by reason of Type 2 Diabetes. It therefore requested that, as anticipated by EJ Smith, the preliminary hearing be reduced from two days to one day, as the issue of disability had now fallen away and only the strike out/deposit order application remained. Unfortunately, despite the respondent chasing the tribunal in this regard, no reply to this request was sent by the tribunal. The hearing remained listed for two days.

Today's preliminary hearing

Start of hearing

23. The claimant was late for the preliminary hearing. The tribunal's clerk tried to call him by telephone several times without success. However, he did in due course arrive. Consequently, the hearing did not start until almost 10:30 AM.

24. I understood from my clerk that the reason why the claimant was late was because of transport difficulties. When the hearing commenced, and particularly conscious that the claimant was a litigant in person, I told the claimant not to worry about it for now but to ensure that in future he set off in time so that the hearing could commence the following day punctually at 10.00 AM.

Recording

25. I was conscious that it was not disputed that, during his employment, the claimant has taken covert recordings. I therefore emphasised to the parties at the start of the hearing that it was not permitted for any party to record the tribunal hearing and that doing so would be contempt of court and could result in criminal proceedings with sanctions ranging up to custodial sentences.

26. I explained that the hearing would be recorded by the tribunal. I explained that a party could apply for a transcript of the hearing from the tribunal after the hearing and that a fee was normally payable for this.

Length and scope of this preliminary hearing

27. Ms Banton expressed surprise that the hearing remained listed for two days and indicated that she thought that it had been reduced to a one-day hearing. She and Mr Donaldson, who was the solicitor representing the respondent, referenced the correspondence which I referred to above about the concession regarding disability and the respondent's application that the hearing

should accordingly be reduced to one day. I asked whether Ms Banton was available the following day and she said that she was not; she had another commitment.

28. I noted that, from his note of the July preliminary hearing, it appeared to have been EJ Smith's expectation that, if disability was conceded, only one day would be required for the hearing. However, the claimant said that he thought that the issues to do with the strike out application would take longer than a day. Ms Banton said that a preliminary hearing on strike out should not be a mini trial and it was carried out on the basis of the claimant's case at its highest and felt that one day would be sufficient. I noted that it was unfortunate that the tribunal had not addressed the issue of the application to reduce the hearing to one day, and that whilst the respondent should ideally have waited for such confirmation before assuming that the hearing had been reduced to one day, it was not an entirely unreasonable expectation on the part of the respondent that this hearing would now be for one day only. In any event, Ms Banton, who was the representative who had prepared for this hearing, was not available the next day and I did not, therefore, consider that it would be fair to expect the hearing to go into the second day in the circumstances. However, I deferred making a decision until I had explored with the parties how much time might be needed to deal with the strike out/deposit order application.

Documents

29. A bundled numbered pages 1-742, in two volumes, had been prepared by the respondent for the hearing. In addition, there was a pack containing transcripts and data relating to the various recordings made covertly by the claimant.

30. In addition, witness statements had been provided from Ms Caroline Marais (the Group Director of Human Resources for the respondent) and from the claimant. The claimant produced two statements, the second of which was a supplementary statement in relation to metadata in connection with his recordings. He produced this in response to orders made on 5 November 2024 by EJ Webster which were made by her following an application of the respondent.

31. Furthermore, Ms Banton had produced a 55 page set of submissions on the strike out and deposit issues. This had only been produced and provided to the claimant and the tribunal on the morning of the hearing.

32. I explained that, whilst I had done a considerable amount of pre-reading in relation to this hearing, I still needed to read the remainder of one of the witness statements and I would need to read Ms Banton's submissions. Given their length, that was likely to take time. In addition, the claimant, who was a litigant in person, would need the opportunity property to read the submissions. I said that I thought at least an hour would be needed to do this alone.

33. I then explored the amount of time that would be needed for the hearing. Both parties said that they wished to cross-examine the witnesses of the other party. Ms Banton said that she would need an hour to cross-examine the claimant. It was initially very difficult for me to get any indication from the claimant as to how much time he would need for cross-examination of Ms Marais. I said

that I acknowledged that it was difficult for a litigant in person to be precise about this. However, the claimant appeared initially reluctant to commit to any indication of the time he might need. Eventually, he said that he would probably need in excess of two hours. In addition, the parties would need time to make oral submissions.

34. Because the hearing had started late and it was already 11 AM by that stage, I said that I was concerned that it would not be possible to deal with everything in one day if the parties really wanted the time that they had indicated. I noted that the respondent was not available the following day and indicated that I did not think that it would be helpful to start the application and then have to relist a further date to complete the hearing of that application on a date which could be weeks or months ahead.

35. At that point, I suggested that one possible way of using the tribunal's time as efficiently as possible, which might avoid wasting today's hearing and consequently wasting time and cost for the parties and the tribunal service, might be to consider the application that the claim should be struck out on the basis that it was scandalous and vexatious and that the claimant's conduct of the proceedings was scandalous, vexatious and unreasonable, but to leave the application to strike out on the basis that the claim had no reasonable prospect of success (and the accompanying deposit order application that a deposit order should be made on the basis that the claim had little reasonable prospect of success) to another preliminary hearing (although, if the first part of the application to strike out was successful, there would obviously be no need for that further preliminary hearing). I noted in particular that it seemed to me having read the papers that, particularly given the very large number of individual complaints, the amount of time required to deal with a reasonable prospects application would be considerably more than that required to deal with the other elements of the application; these in summary related to the claimant's motivation and reasons for bringing these proceedings and whether they were improper or not; this element was, therefore, much more self-contained. I also asked Ms Banton how much of her skeleton submissions related to that element of the application.

36. Ms Banton said that, to consider that part of the application only, I would only need to read pages 1-5 and 51-55 of her submissions. That was only likely to require 10 to 15 minutes reading time. Furthermore, she could complete her cross-examination of the claimant in less than half an hour and needed no more than 20 minutes for submissions. This would dramatically reduce the amount of time required. She said that she thought it would be sensible to proceed as I had suggested.

37. I asked the claimant what his position was. The claimant objected to the proposal. Despite talking at length about the matter and being very argumentative about it, he never gave me a sensible reason as to why he objected. However, his position was that the hearing should be postponed and relisted at another time. Although I did not say this at the time, in retrospect and having observed the claimant and come to the conclusions which I came to over the course of the hearing, I consider that this was simply an attempt by the claimant to prolong the proceedings further in the hopes of trying to extract a settlement from the respondent.

38. I considered what the parties said. For the reasons above, I considered that it was absolutely a proportionate and sensible use of tribunal time to proceed as I had suggested and one which was within the overriding objective; the proposal would both avoid delay and save expense; there was no reason why the hearing could not go ahead on that basis as both parties were prepared for it. The hearing therefore proceeded on that basis.

Claimant's submission about strike out hearing

39. During the course of these preliminary discussions, the claimant suggested that this hearing should not go ahead because he was unaware that there was a strike out application from the respondent; he said that he was waiting for an actual written strike out application from the respondent. This was an extraordinary submission to make in the circumstances. The strike out/deposit application was clearly set out in the response form. Furthermore, EJ Smith had listed this hearing to consider the strike out/deposit application and that was reflected both in his case management orders from the July preliminary hearing and the notice of hearing. Furthermore, the claimant's own witness statement, which he had prepared for this hearing, is headed *"Witness statement of Mr Kumi response to strikeout applications and deposit order"* and it goes on to address the applications. The first paragraph of that witness statement states *"This response has been prepared by the Claimant in defence of the strike out applications which have been made against the Claimant by the Respondent who are spreading the conspiracy theory that the Claimant's claim is vexatious, unreasonable, frivolous and slanderous."*

40. The claimant's submission that he was unaware that there was a strike out application from the respondent was, therefore, in itself indicative of the disingenuous nature of the claimant.

Timetable for this preliminary hearing

41. Having made the decision to proceed with the preliminary hearing on this basis, I agreed with the parties that there would be a break to enable both the claimant and myself to read the relatively small number of sections of Ms Banton's submissions which now needed to be read, and for me to complete reading Ms Marais's witness statement. It was also agreed that the claimant would cross-examine Ms Marais first and then Ms Banton would cross-examine the claimant and that neither party would need more than 20 minutes for their submissions.

Breaks

42. The claimant did not seek to reactivate any application to convert this hearing to a video hearing. However, one of the reasons why the claimant had stated that he previously wanted the hearing to be by video was because of his disability. His submission had not been accepted because there was no evidence that an in-person hearing would adversely affect him in relation to his disability and there was every opportunity for there to be breaks at an in-person hearing. However, although in the end the hearing lasted until after 5 PM (having started half an hour late), the way the hearing was structured meant that there were many breaks of a substantial nature throughout the day. Furthermore, the claimant participated fully and actively in the hearing. There was no indication

whatsoever that he was at any disadvantage because of the hearing being held in person, either in relation to his Type 2 Diabetes or otherwise.

Management of the hearing

43. This was not an easy hearing to manage. That was because of the way the claimant conducted himself at the hearing.

44. The claimant was frequently argumentative and would not take direction from me. He frequently cut across the respondent's representative and me, and had to be reminded on numerous occasions not to do so. His manner of questioning and submissions strayed frequently from what was relevant and it was repetitive, which caused more time than was necessary to be needed, and I frequently needed to interject to try and keep the claimant on track. Conscious as I was that he was a litigant in person, I tried not to interject early on. However, as it became a persistent pattern, I needed to do so more and more.

45. When he was cross-examining Ms Marais, the claimant frequently went into making lengthy submissions as if he was giving his own evidence rather than questioning the witness; he asked irrelevant questions (mainly to do with the merits of his claim as opposed to the issues of the strike out application I was hearing) despite my repeatedly explaining to him that they were irrelevant and why and asking him to move on; he was sometimes rude to Ms Marais by telling her that her answers were too long or saying sarcastically, at the end of one of her answers, "are you finished?"; he cut over her evidence when she was giving answers, despite various warnings from me; he cut over me when I tried to interject to explain this and often disputed with me instead of taking direction and moving on. In fact, the vast majority of his questioning, which in the end lasted around an hour, was irrelevant. Because of this, after 45 minutes, I told the claimant that he could not go on questioning indefinitely, particularly where his questions were not material to the application which I had to determine, and told him that I would allow him only 15 minutes more to question Ms Marais. He stopped after around an hour.

46. During his own evidence, the claimant cut across Ms Banton when she was questioning him and cut across me when I interjected. The claimant was an evasive witness. He had a pattern of not answering the questions which were put to him. He persistently went off on tangents and dwelt on irrelevancies rather than answering the questions put to him. Even though Ms Banton did not have a huge amount of cross-examination for him, it took much longer than was necessary because of the claimant's approach.

47. As noted, the parties had agreed that they would need no more than 20 minutes for their submissions. Ms Banton completed her submissions in much less than that. In his submissions, the claimant again went off on tangents throughout and repeated the things that he was saying over and over again. In the end his submissions had the feel of a rant rather than a set of submissions. The claimant did not stick to the timetable which had been agreed. After about 20 minutes, and particularly as the majority of what he was saying was of little assistance to the determination of the application which I had determine, I politely reminded the claimant that he had already had his 20 minutes but allowed him more time. The claimant carried on. After 30 minutes, I reminded him again. The claimant said he was nearly finished. In the end, he went on for another 10

minutes (in the same vein) until his submissions eventually ended. He had had 40 minutes in total.

The Law

Strike out

48. The power to strike out a claim is contained in Rule 37 of the Employment Tribunal Rules 2013 which provide:

"37. At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds ….

(a) that it is scandalous or vexatious or has no reasonable prospect of success;

(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;..."

49. A "vexatious" claim or defence has been described as one that is not pursued with the expectation of success but to harass the other side out of some improper motive (ET Marler Ltd v Robertson 1974 ICR 72, NIRC). The term is also used more widely to include anything that is an abuse of process.

50. The word "scandalous" in the context of rule 37 means irrelevant and abusive of the other side. It is not to be given its colloquial meaning of signifying something that is "shocking" (Bennett v Southwark London Borough Council 2002 ICR 881, CA.

Findings of Fact

51. I make the following findings of fact. In doing so, I do not repeat all of the evidence, even where it is disputed, but confine my findings to those necessary to determine the application.

Respective reliability of evidence

52. In this context, however, I make the following observations about the respective reliability of the evidence given by the claimant and Ms Marais.

53. I do have serious concerns about the reliability of the claimant's evidence. This is partly for the reasons set out above in the section regarding the management of the hearing. As well as the general approach that the claimant took at this hearing, he was in his own evidence evasive and did not answer the questions put to him and instead frequently went off on tangents of his own. During the hearing he also made various assertions which he must have known were not correct. One example is his assertion, already referenced above, that he was unaware that there was a strike out application from the respondent.

54. By contrast, Ms Marais did seek to answer the questions put. This was despite the fact that those questions were often not very clear. She was straightforward in her answers and gave relevant context to them. Her answers remained consistent with the contents of her witness statement and the other

contemporaneous documents. In short, I had no concerns about the reliability of her evidence.

55. Therefore, where there is a conflict in the evidence of the claimant and Ms Marais in circumstances where there are no contemporaneous documents to assist, I am inclined to believe Ms Marais's evidence.

The claimant's employment

56. As noted, the claimant's employment with the respondent was of short duration, from 24 July 2023 until 28 July 2023. He was employed as a Night House Steward. His duties involved cleaning duties.

57. The claimant's employment comprised one induction day, two training days, and one single night shift on the night of 27/28 July 2023.

58. The claimant had been recruited following a recommendation to the respondent by Mr James Tunde, the Senior Head Housekeeper.

59. The claimant covertly recorded his conversation with Mr Jakub Joubert of the respondent when he dropped his CV into the respondent's hotel in July 2023. Ms Marais has listened to this recording and I accept her evidence that the recording itself is unremarkable. However, it is significant that the claimant chose to make a covert recording of this conversation, as there was no reason at all why he should need to do so; he had not even started working for the respondent at this point.

60. When he was asked about this in cross-examination, his answers were wholly unsatisfactory. He was unable to give a good reason for doing this (because, of course, there is no good reason for doing it). He suggested that he didn't know whether he was recording it or why he was recording it (which is implausible in its own right). He said it just happened to be the case that he was recording it. He then said *"Why would I want to stitch him up when he was trying to give me a job"*. I accept Ms Banton's submission that the claimant's own words are indicative of exactly the purpose of his deciding to record this early conversation (and indeed the future conversations which he covertly recorded); they were precisely to "stitch up" the respondent by trying to gain information which he might later use to bring an employment tribunal claim and thereby extort money from the respondent.

61. The claimant's CV highlighted a number of recruitment concerns. First, the last seven years of the claimant's employment history were only summarised generically as *"March 2016-2023 cleaning"* and therefore provided no specific particulars of his prior recent employment. The claimant's only employment reference indicated a short period of employment of about a month with Bidvest Noonan. The claimant's only other reference provided contact information for another individual whose occupation was indicated as a plumber. I accept the assertion made by Ms Mariais in her witness statement that, with the benefit of hindsight, the claimant clearly took steps to avoid his prior employment history being known to the respondent, in particular the succession of short periods of employment which, as I shall come to, were followed by employment tribunal claims brought by him against his respective employers.

62. Nevertheless, because of the recommendation from management, the respondent decided to proceed with the claimant's application.

63. The respondent duly employed the claimant. A probationary period applied during the entirety of the claimant's employment.

64. As the respondent and the tribunal are now aware, the claimant covertly recorded every single interaction with the respondent and its various employees over the duration of his recruitment; his days of training/induction; and his first and only worked night shift with the respondent. The respondent's knowledge of the extent of these recordings has clearly changed over the course of the proceedings. A reading of the notes of the April 2023 preliminary hearing indicates that what was known to EJ Walker was the existence of the eight hour recording of the night shift; there is no reference to the many other recordings.

65. However, as of now, it is known that there are at least 31 such recordings in existence. Throughout the process, the claimant has only released these in a drip feed manner.

66. Following requests for the complete recordings by the respondent, the claimant on the morning of 17 April 2024 (the day of the April preliminary hearing) provided five recordings. As noted, at the April preliminary hearing, EJ Walker noted that she had *"ordered the claimant to deliver a copy of the full unedited recording to the respondent so that they can consider their position"*.

67. On 8 May 2024 the claimant provided 12 covert recordings (again, despite the fact that it is now known that he had at least 31 recordings). He did not, however, confirm whether those recordings were complete or unedited.

68. The respondent's solicitors therefore wrote a number of times to the claimant seeking confirmation that the 12 recordings were complete and unedited. The claimant refused to acknowledge or reply to such correspondence.

69. As a result, the respondent's solicitor had to write to the tribunal again regarding the claimant's failure to confirm the status of the recordings and to engage with their correspondence. The claimant again repeatedly failed to respond to these reasonable requests or the application to the tribunal.

70. This resulted in the orders made at the July preliminary hearing by EJ Smith in relation to specific disclosure. These have already been quoted in full above.

71. The claimant then provided 31 recordings. That is demonstrative that, despite the prior requests of the respondent's solicitors, he had attempted to conceal salient recordings from them.

72. The claimant submitted at this hearing that he had not in fact breached EJ Walker's specific disclosure order from the April preliminary hearing (quoted in full above) because that related to the eight hour recording discussed at that hearing and because it was limited to his disclosing only those *"parts of which he seeks to rely on in these proceedings"*.

73. However, that is not correct. The full order states that:

"6. The Claimant must by 8 May 2024 provide the respondent with a full unedited copy of the recording(s) he made during the time he worked for the respondent parts of which he seeks to rely on in these proceedings."

It does not say that the claimant should only disclose the parts which he seeks to rely on; it states that he should disclose a full copy of the recording(s) he made during the time he worked at the respondent (i.e. all 31 of them), albeit that he himself may only be seeking to rely on parts of them in support of his claim. The claimant is an intelligent individual and, as I will come to, has a great deal of experience in bringing employment tribunal proceedings, particularly those where covert recordings (taken by him) are a material issue. I consider that he knows and knew exactly why it is important to disclose the full recordings, and yet did not do so. His submission that he had complied with EJ Walker's specific disclosure order by disclosing parts of the recordings is therefore another example of him being disingenuous. His approach to disclosure of the recordings was entirely unreasonable and I consider it to be another example of him trying to be as unco-operative as possible and to prolong the proceedings and put the respondent to unnecessary time and cost, again in the hopes that the respondent would agree to a financial settlement with him rather than have to incur that time and cost.

74. In response to EJ Smith's order, the claimant did produce a witness statement regarding his disclosure, dated 5 August 2024.

75. The claimant had also repeatedly refused to provide the meta data associated with the original recordings which would also help determine the date, time and location. This was despite the tribunal's warnings to the claimant to engage with the respondent's communications. As a result, the respondent's solicitors wrote to the tribunal for an order for the claimant to provide the salient meta data. EJ Webster gave an order in this respect on 5 November 2024, as referenced earlier in these reasons.

76. The claimant has subsequently provided the meta data, some under emails of the 12 November 2024 and the majority of the meta data under emails of 13 November 2024.

77. Ultimately, the respondent incurred the cost of getting professional transcribers to make transcripts of those recordings.

78. Ms Marais has listened to the recordings. As I have no reason to doubt it, I accept Ms Marais' evidence that the claimant's covert recordings are of very poor sound quality as they suffer from being of low-volume, and from repeated and significant sound interference through rustling of clothing and through over talking of parties being covertly recorded.

79. Ms Marais also gave evidence that the claimant also provided salient extracts of his own transcripts of the covert recordings; that he has purportedly been able to transcribe elements of the recordings which were inaudible to professional transcribers; and that he appears to have set out in the transcripts not what the recordings evidence but also his own recollection or belief as to what was said. I have no reason to doubt the reliability of Ms Marais' evidence and accept this. Accordingly, I find that the claimant's behaviour in providing

transcripts containing his own amendments rather than accurate transcripts of the recordings was also unreasonable.

80. Most of the claimant's complaints relate to the single night shift which he worked on 27/28 July 2023. Ms Marais' evidence was that the employees with whom the claimant engaged that night had a very difficult time with him and were as a result visibly upset and tired and that this was supported by the night manager and security staff's recollection of the evening. Those employees raised serious concerns about the claimant's behaviour. In summary, it was as a result of this conduct and the claimant's increasingly confrontational and argumentative conduct witnessed by Mr Joubert when Mr Joubert sought to investigate these matters with the claimant that the respondent dismissed the claimant (who had after all been employed for only 5 days and was still in his probationary period). Ms Marais gave evidence that the recordings which she has listened to support the assertions that it was the claimant who was behaving unreasonably towards the respondent's other employees on that shift. I make no specific finding in this respect as it is not necessary in order to determine the application before me in its limited form, but note that I have no reason to doubt the reliability of Ms Marais' evidence. Furthermore, it was evident from his behaviour at this hearing that the claimant is confrontational and argumentative, so it would not be surprising if he was also confrontational and argumentative in relation to Mr Joubert.

81. In addition, Ms Marais gave evidence that the recordings indicate that it was the claimant who was deliberately raising topics of conversation, such as discussing matters of race, which might lead to conversations from which he could try and put together an employment tribunal claim. In other words, he was trying to entrap the respondent's employees in these conversations. Again, Ms Marais has heard the recordings and I have no reason to doubt the reliability of her evidence; I therefore accept that that was the case.

82. As noted, the claimant raised a post-employment grievance on 2 October 2023, which ran to some 27 pages. It is notable that this was only submitted over two months after the end of his employment (which was on 28 July 2023). I have already quoted the relevant final paragraphs of that letter, which ends with the demand for £18,000. I reiterate that, given the large time gap between the end of his employment and the raising of this grievance and the nature of those final paragraphs, this reads like a demand for money rather than any genuine attempt to try and resolve what the claimant alleges is serious workplace illegality.

83. Furthermore, by seeking £18,000 as a settlement, the claimant was therefore seeking 10 months' future loss of earnings, despite being in a profession where as a cleaner he would be able to find immediate alternative employment either through agency placement or direct employment. The sum sought by him was therefore a large one.

84. For all of the above reasons, I accept that the reason why the claimant chose covertly to record every interaction he had with the respondent's employees was for the purposes of manufacturing an employment dispute with the respondent so that he could litigate to secure a significant payout. The purpose of the covert recordings was to create evidence of such manufactured complaints to support his obtaining a settlement.

85. The claimant submitted at this hearing that all he was trying to do was to enforce his legitimate employment rights. However, it follows from the factual findings set out above that I do not accept that this was his motivation; his motivation in bringing the claim was not to enforce legitimate employment rights; rather, it was a pre-planned attempt to extort as much money as possible from the respondent. As Ms Marais aptly put it in her witness statement, the claimant was *"seeking to effectively "weaponise" the employment laws of the United Kingdom and the Employment Tribunal system for significant financial gain"*.

86. I am able to reach that conclusion on the facts in relation to the claimant's behaviour vis-à-vis the respondent alone, without having to look at the details of the claimant's previous litigation of a similar type. The conclusion is, however, even further reinforced when one does look at that previous litigation.

The claimant's previous litigation

87. The claimant has confirmed that he has brought multiple claims before employment tribunals, a great deal of evidence of which has been provided in the bundle (specifically a variety of judgments in six different sets of proceedings brought, in terms of when the claims were presented) over the period from 2018 to 2022).

88. Some of the published judgments include tribunals refusing applications by respondents to strike out some or all of the claimant's complaints, although the bar for striking out a claim on the merits, namely that the claim must have no reasonable prospect of success, is a high one.

89. It is notable, however, that there are no published successful judgments in the claimant's favour. All of the published judgments which determined the outcomes of the respective claims show that the claimant's claims were either unsuccessful on the merits or were struck out by reason of the unreasonable conduct of the claimant or otherwise. Furthermore, the respondent's solicitors searched the Employment Appeal Tribunal judgments website and found no evidence of the claimant ever having appealed any of these decisions.

90. Aside from those claims where a judgment or a judgment and reasons have been published, the claimant said that he had had "loads" of COT3s (in other words ACAS settlement agreements where a particular employment dispute or tribunal claim brought by him had been settled, presumably for a financial sum, and where there would not therefore be any judgment published on the tribunal's website). He never disclosed any details of these settlements, but it is clear that there have been a large number of them. These agreements therefore almost certainly concern claims or threats of claims where the former employer in question decided, as the claimant would have hoped, to pay up rather than fight the claimant's claim/threatened claim.

91. However, those judgments and reasons which have been published indicate a pattern of behaviour by the claimant.

92. I set out some examples below.

2207303/2021 Mr M Kumi v Nando's Chickenland Ltd

93. This case was heard over two days on 13 and 14 September 2022 at London Central before a full tribunal. I set out below some of the facts found in the tribunal's written reasons for its decision to dismiss the claims on its merits.

94. The claimant worked for this employer as a night cleaner from 18 August 2021 until he resigned on 28 September 2021, having gone off sick on 31 August 2021 without at any stage returning to work. He had worked for approximately nine shifts in total. At paragraph 9 of its reasons, the tribunal states:

"During his shifts the Claimant was covertly recording on his telephone conversations with his work colleagues for the purposes of gathering evidence which he could then use to make a claim against the Respondent and to negotiate a financial settlement."

95. The tribunal's findings then detail that the claimant's manager started to receive complaints about the claimant and that he behaved towards one of his managers in a way that made her feel very uncomfortable and vulnerable (which is consistent with the evidence which Ms Marais gave about how the respondent's employees felt in relation to the claimant's behaviour on the one night shift which he worked for the respondent).

96. The claimant then raised a lengthy grievance and demanded a settlement of £20,000 *"to draw a line in the sand under the grievance raised"* (paragraph 30).

97. The tribunal noted that (even by that stage back in September 2022) *"the Claimant had brought other tribunal claims against his former employers, where he was also engaged for only a brief period of time"* (paragraph 53(d)).

98. The tribunal concluded at paragraph 55:

"…We find that he indeed engineered his claim from the start. We find that the whole purpose of him joining the Respondent was to gather evidence that he could then use to make a claim and negotiate a favourable financial settlement.…"

And, at paragraphs 69-70:

"69. To sum up, we find that it was all planned by the Claimant from the outset. However, on this occasion his plan did not work out because it appears the Respondent was not prepared to pay him off. The claimant admitted in is evidence that perhaps he asked for "too much".

70. These findings lead us to the conclusion that the Claimant has acted vexatiously and unreasonably in the bringing these proceedings. It was a blatant abuse of the Tribunal process."

2206750/2022 Mr M Kumi v University College London Hospitals NHS Foundation Trust

99. This was another case brought by the claimant in the London Central tribunal. It was struck out at a preliminary hearing on 24 March 2023, by a different judge to the judge who heard the Nando's case. The claimant requested written reasons for the decision and those reasons are therefore available.

100. The claim was in fact struck out because it had no reasonable prospects of success. The judge agreed that *"a claim that is engineered purely for the purpose of generating a settlement would be an abuse of process"* (paragraph 69). However, she did not strike it out as a vexatious/abuse of process claim because she concluded that *"…notwithstanding the apparent similarities between the Nando's claim and this claim, there was insufficient evidence before me that the claimant had engineered this claim"* (paragraph 72). To be clear, she did not find it was not engineered; rather, she found that there was not enough evidence before her at that early preliminary hearing stage of the proceedings for her to conclude that it was.

101. However, she nonetheless found at paragraph 68 that:

"… there were similarities between this claim and the Nando's claim, including that the claims had both arisen after a short period of employment, the allegations involved were weak and the Claimant's use of covert audio recordings. I also considered it was suspicious that prior to issuing proceedings the claimant had submitted a grievance asking for a significant amount in compensation, above the normal levels of compensation for a claim of this nature."

2305626/2021 Mr M Kumi v Birkin Cleaning Service Ltd

102. This claim was brought in the London South tribunal and was struck out following a preliminary hearing on 18 April 2023 by another judge because it was frivolous and had no reasonable prospect of success.

103. In the written reasons for the decision, the judge found that the claimant had worked at the respondent's site as a cleaner, but worked for two days only before deciding not to return to work all; that he raised a grievance which the respondent investigated; and that he sought a payment of £50,000 as a "settlement". He soon afterwards he changed that demand to one of £20,000.

104. The judge's conclusions include the following:

"70. The claimant's case as set out in his further particulars and his submissions are no more than a series of bare and unsubstantiated assertions. The claimant did not dispute that he sought to obtain £50,000 from the respondent after working for it for two days. He also does not dispute that he has brought multiple claims against other businesses who have engaged him from an agency and has sought large amounts of money to settle these claims. Having regard to the large sum the claimant sought from the respondent after two days work, the Tribunal accepts the respondent's submission that this is a claim that is frivolous in the sense that the claimant's improper motive for bringing it was to extract compensation from the respondent. The judgment of the Tribunal is that in bringing the claim the claimant behaved unreasonably.

71. The claim is struck out because it is vexatious and has no reasonable prospect of success."

105. Therefore, from the evidence of the other claims, the claimant appears to have a repeated practice of variously: joining employers for extremely short periods of employment; instigating and/or participating in conversations for the purposes of manufacturing employment disputes; covertly recording colleagues whilst employed, for the purposes of pursuing engineered grievances and/or employment tribunal claims; seeking to extort significant and disproportionate compensation from respondents; and presenting engineered tribunal claims of discrimination and whistleblowing. As noted above, an employment judge has already made findings of fact that such repeated conduct by the claimant *"was all planned by the claimant from the outset"*.

106. The claimant has therefore effectively been running what amounts to an "employment tribunal business", where he systematically engages in short periods of employment, covertly records colleagues in an attempt to entrap them into saying something unguarded, and then brings claims in the employment tribunal in order to extort financial sums out of his former employers.

107. The claimant's response to the weight of evidence from his previous employment tribunal claims and to the respondent's not unreasonable suggestion that the claim against it was similarly vexatious is also telling. In his witness statement for this hearing, the claimant stated:

"1. This response has been prepared by the Claimant in defence of the strike out applications which have been made against the Claimant by the Respondent who are spreading the conspiracy theory that the Claimant's claim is vexatious, unreasonable, frivolous and slanderous.

2. The Claimant is just exercising his employment rights in the cases that he has brought to the Employment Tribunal. There's resistance by the conspiracy theorists when the Claimant exercises his Employment Rights. The conspiracy theorist say that the Claimant engineers his claims and acts vexatious in bringing claims.

3. [The employment judge who heard the Nandos claim] made errors in reaching his decision in the Claimant's case against Nandos and helped spread misinformation about the claimant. The judge engineered misinformation about the Claimant and played a key role in the spread of the misinformation about the claimant.

4. This continues to affect the Claimant up to date and will do in the future because the Judge passed the disinformation to the Employment Tribunal who then also played a key role in the spread of that disinformation online that the Claimant had engineered his claim…"

108. Whilst the claimant is entitled to disagree with previous employment tribunal decisions, he goes much further here. Entirely unreasonably, he dismisses the respondent and others as conspiracy theorists and, with no basis whatsoever, accuses an employment judge of engineering and spreading "misinformation" about him.

Conclusions on the strike out application

109. I make the following conclusions.

Is the claim scandalous or vexatious?

110. I refer to my findings of fact above in full. However, in summary, the claimant was only employed for five days; right from the beginning of his involvement with the respondent, and for no good reason, he began covertly recording conversations with employees of the respondent; as I have found, his reason for doing was to try to gain information which he might later use to bring an employment tribunal claim and thereby extort money from the respondent; he deliberately raised issues such as race in an attempt to entrap those with whom he was speaking; and he submitted a lengthy grievance, not at the time of his employment but over two months later, which was couched in terms which indicated that his objective in doing so was to obtain as large a financial settlement as possible from the respondent rather than to remedy serious alleged workplace illegality. His claim was not an attempt to enforce legitimate employment rights but rather a manipulative and dishonest attempt to exploit the employment tribunal system in order to extort from the respondent a significant financial settlement.

111. That behaviour falls squarely within the definition of vexatious. This is a claim brought to harass the other side and brought out of an improper motive. It is an abuse of process of a most serious kind. The claim is also scandalous in that it is irrelevant and abusive of the other side.

112. The claim is therefore both scandalous and vexatious for the purposes of Rule 37(1)(a).

113. As already indicated, I am able to draw that conclusion on the basis of the claimant's claim against the respondent alone. However, to that is then added the copious evidence of previous claims brought by the claimant against other employers where the claimant has done the same thing and has been found to have done the same thing by other employment tribunal judges (as well as the fact that, as he admitted today, the claimant had "loads" of COT3 settlements against other employers, in other words the ones who decided to pay up rather than fight the claims brought against them by the claimant).

114. This simply reinforces the conclusion that his claim against the respondent is vexatious and scandalous.

Is the manner in which the proceedings have been conducted by the claimant scandalous, unreasonable or vexatious?

115. In addition, for the purposes of Rule 37(1)(b), the manner in which the proceedings have been conducted by the claimant has been scandalous, unreasonable and vexatious. There are numerous examples.

116. Having brought the claim, the claimant's conduct in continuing to pursue it in the circumstances and for the motivation described above is in itself conduct which is vexatious, scandalous and unreasonable.

117. It seems extraordinary that one night shift could generate 60 different allegations of race discrimination. As I have already found, the sheer number of allegations has been designed to put the respondent to further cost in terms of time and expense in an attempt to force a financial settlement out of the respondent. That is an abuse of process. It is vexatious, scandalous and unreasonable.

118. The claimant's breach of tribunal orders in relation to his recordings and his refusal to engage with the respondent's reasonable requests for disclosure in this respect, as outlined above, is similarly vexatious, scandalous and unreasonable. It is again a cynical attempt by the claimant to make life as hard as possible for the respondent in order to obtain a financial settlement.

119. The tailoring of his recordings by only disclosing partial elements of them and the putting of his own versions in transcripts of sections which were not audible to professional transcribers is behaviour which is similarly unreasonable and, with the claimant's motivation, both vexatious and scandalous.

120. The claimant, without a proper basis, made allegations of perjury against the respondent, which EJ Smith warned him about at the July preliminary hearing. This was unreasonable conduct on his part.

121. The claimant in his witness statement for this hearing dismissed the respondent and others as conspiracy theorists for suggesting his claim was vexatious. Given that I found that it was vexatious, that belittling and insulting accusation is particularly unreasonable.

122. Without giving any basis for this accusation, the claimant in his witness statement for this hearing accused an employment judge in relation to one of his previous claims of engineering and spreading "misinformation" about him. This was entirely unreasonable and indeed showed contempt for the tribunal system.

123. The claimant's behaviour at the tribunal today, which was evasive, dishonest and confrontational (and which is described more fully in detail above), was also unreasonable.

Should I exercise my discretion to strike out the claim?

124. The claimant's cynical and dishonest behaviour is of a very serious magnitude. This is a claim which was planned in advance and was designed to extort money out of the respondent. It is a total abuse of the employment tribunal process. To allow it to continue and for the respondent to have to endure the further cost of defending it would be an injustice. I have serious concerns about the claimant's honesty and integrity, which I have outlined above and which would make fair litigation virtually impossible going forwards. I have no doubt that the way the claimant has handled this litigation so far would continue if the case went forward. For all these reasons, I have no hesitation in exercising my discretion to strike out the claim in its entirety; to do otherwise would be an injustice.

125. The claim is, therefore, struck out under both Rule 37(1)(a) and 37(1)(b).

Written reasons

126. After I had delivered my reasons for my decision orally, I explained that I would, in a moment, ask the parties whether they wanted the written reasons for the decision and that they would be able to request them either now at the hearing or within 14 days of the judgment being sent to the parties.

127. Before doing so, I explained, for the claimant's benefit, two things. First, I said that, if a party wished to appeal the tribunal's decision, that party would need the written reasons in order to do so, although I stated that an appeal could only be founded if there was an error of law by the tribunal or if its decision on the facts was perverse; there were no grounds for appeal if a party simply disagreed with the factual findings that the tribunal had made. Secondly, I explained that, if written reasons were produced, they would be published online on the tribunal's website and that the tribunal had no discretion as to whether or not to do this. The claimant had previously said that previous employment tribunal decisions involving claims brought by him had been published online; that these contained adverse findings about him; and that that made it harder for him to obtain alternative work. He was, therefore, aware of this issue. However, I nonetheless made these remarks because I thought it was important that the claimant, as a litigant in person, should be alerted to the important implications of a decision to ask for or not to ask for written reasons before he made that decision.

128. I then asked the parties whether they wanted written reasons. The claimant immediately said that he did want written reasons.

129. However, during the respondent's subsequent costs application, the claimant submitted that he could not get future work if the reasons for my decision were published online. I explained again that I had no discretion as to whether they were published online and that whether they were published depended on whether the parties requested the written reasons. I asked the claimant, given his concerns, whether he wanted to reconsider his previous decision to ask for the written reasons. The claimant said that he would go and take legal advice and then decide whether or not to ask for the written reasons. I reiterated that he had 14 days from the date the judgment was sent to the parties to make the decision as to whether to request written reasons.

130. In light of the claimant's change of mind, I asked the respondent whether it wanted to request written reasons (because it had given no indication previously, as the claimant had originally immediately said that he wanted written reasons, so it had not been necessary for the respondent to indicate its position at that point). Ms Banton and Mr Donaldson indicated that, whilst the respondent was not requesting written reasons at this point, it would think about it and consider its position. They indicated that they thought that there was a good public policy reason as to why there ought to be written reasons; the respondent had benefited from the fact that the claimant's previous behaviour had been exposed through written reasons from his previous claims which were published online, and they were considering whether they ought to be asking for the written reasons so that they were published online to assist potential future employers against whom the claimant might seek to bring vexatious complaints in a similar manner.

131. However, the point became academic because, just before I was about to give my decision in relation to the subsequent costs application, the claimant stated that he wanted to appeal my decision to strike the claim out and did therefore request the written reasons.

132. Those reasons have, therefore, duly been provided.

Respondent's costs application

133. After I had given my decision to strike out the claim and the reasons for that decision orally, I asked the parties if they had any further queries. Ms Banton indicated that it was likely that the respondent would make an application for costs against the claimant.

134. By that stage it was about 4 PM. I told Ms Banton that, if the respondent wanted to make an application for costs and it was possible to do so at this point, it would be proportionate for it to do so at this point when everyone was here and there was time left during this hearing to hear such an application; I noted that, if the respondent made the application at a later stage, it was likely that there would be a need for a further hearing and consequently further delay and further cost.

135. Ms Banton indicated that the respondent's costs in any event far exceeded the £20,000 limit up to which a tribunal could make an award of costs without the need for a detailed assessment. However, she and Mr Donaldson briefly took instructions.

136. When Ms Banton had done so, she said that the respondent would make its costs application now and would limit the amount that it sought to £20,000. She indicated that the basis of the application would be the findings which I had made in my decision to strike out the claim, namely that the claim was vexatious and scandalous and that the manner in which the proceedings had been conducted by the claimant had been scandalous, unreasonable and vexatious.

137. The claimant objected to the application being heard at this point. He said that he wanted to go and take legal advice before the application was heard. He felt that the matter should be left to another day. Ms Banton and Mr Donaldson pointed out that the claimant had been sent several without prejudice save as to costs letters by the respondent in which the respondent specifically notified the claimant that a costs application would be forthcoming and specifically advised him that he should go and get legal advice about this.

138. I therefore considered that the claimant's submission about getting legal advice had little merit. The claimant could have taken such advice already but had not done so. Furthermore, the first stage of the test in relation to costs had already been met by the findings which I had made in the strike out application; all that remained was to consider at the second stage whether or not I should exercise my discretion as to whether to make an award of costs and if so in what amount. There was time to hear the application at this point. Holding the application over to a separate hearing would be unnecessary, would not prejudice the claimant as he had to face the application at some point anyway, but would cause unnecessary additional delay and cost. It was therefore in the interests of justice to hear the application at this point.

139. I then proceeded to hear the application.

140. I first took time to summarise for the claimant's benefit the law in relation to costs in the employment tribunal. I also explained that I could, but was not obliged to, take into account the claimant's financial means in deciding whether to award costs and if so in what amount, and that I would, therefore, need to ask him some detailed questions about his financial means.

<u>The law on costs</u>

141. The tribunal's powers to make awards of costs are set out in the Employment Tribunal Rules 2013 at Rules 74-84. The test as to whether to award costs comes in two stages:

142. Firstly, has a party (or that party's representative) 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 or did the claim or response have no reasonable prospect of success? If that is the case, the tribunal must consider making a costs order against that party.

143. Secondly, if that is the case, should the tribunal exercise its discretion to award costs against that party? In this respect the tribunal may, but is not obliged to, have regard to that party's ability to pay.

The application

144. Ms Banton then made the respondent's costs application. The claimant opposed the application and made submissions as to why I should not make an award of costs. In addition, I asked the claimant some detailed questions about his financial means.

145. I then adjourned to consider my decision. When I returned, I gave the parties my decision and the reasons for it orally.

Decision

Stage 1

146. As noted, my decision in the strikeout application was that the claim was vexatious and scandalous and that the manner in which the proceedings had been conducted by the claimant had been scandalous, unreasonable and vexatious. As noted, a vexatious claim includes anything that is an abuse of process.

147. It therefore follows that the claimant acted vexatiously, abusively and otherwise unreasonably in both the bringing of the proceedings and in the way that the proceedings had been conducted. The first stage of the test was therefore satisfied on a number of grounds and I was obliged to go on to consider whether to exercise my discretion to award costs at the second stage of the test.

Stage 2

Reasonableness of costs sought

148. I noted first that the amount of costs sought by the respondent was entirely reasonable in the circumstances of this claim. The total costs incurred by the respondent in relation to the claim were just short of £70,000. This excludes VAT and the figures listed below are all figures without VAT being added.

149. There were three elements to the costs.

150. First, Ms Banton's fees for the hearing were £6,500. Ms Banton is a barrister of 1996 call and, in the light of that and the complexity of the preparation for this hearing, I do not consider that those fees are unreasonable.

151. Secondly, Mr Donaldson's fees in relation to the claim were £57,941.65. This represents 171 hours of work at £425 per hour (totalling £72,675) but with a discount built in which brought the total down to the figure of £57,941.65. Mr Donaldson is a solicitor of 1998 call. I do not consider that his hourly rate is unreasonable in the light of that. Furthermore, I am not in any way surprised that so much time was required to be spent by him, particularly given the huge amount of time that would have been necessary to deal with the issue of the numerous transcripts and the recordings which the claimant made. I do not,

therefore, consider that his fees are unreasonable. Furthermore, the fact that Mr Donaldson has had to spend so much time is because of the manner in which the claimant has chosen to conduct this litigation, in particular because of his use of recordings but also because of the enormous number of issues which he has chosen to set out as part of his claim; he has unquestionably done this in order cynically to increase the amount of work for the respondent and therefore increase the chances of the respondent agreeing to pay him off in a settlement rather than fight the claim.

152. Finally the cost to the respondent of providing the large number of transcripts using professional transcribers was £5,293.86. Again, given the volume of recordings and the costs of external transcribers, I do not consider these fees to be either surprising or unreasonable. Again, such costs would have been unnecessary but for the manner in which the claimant has chosen to conduct this litigation.

153. The respondent has, however, sought to recover only a fraction of those costs in its application for £20,000. It follows that, as I found the totality of those costs to have been reasonably incurred, £20,000 has certainly been reasonably incurred.

154. Furthermore, all of those costs flow directly from the claimant's vexatious, abusive and unreasonable bringing of these proceedings or his vexatious, abusive and unreasonable conduct of these proceedings.

Without prejudice save as to costs letters

155. The respondent sent the claimant a number of without prejudice save as to costs letters: on 11 October 2024 (three letters); 14 October 2024; 15 October 2024; 16 October 2024; and 17 October 2024 (two letters).

156. Those letters started with a drop hands offer; the respondent subsequently offered £2,000 by way of settlement and eventually £5,000 by way of settlement. The letters warned the claimant that, if he did not accept the offer, the respondent would seek its costs in due course.

157. The claimant did not accept any of these offers. The claimant had sought £19,000 and eventually said that he would not go below £12,000. In the light of the findings that I have made, it was entirely unreasonable for the claimant not to have accepted those offers.

158. Furthermore, in those letters, Mr Donaldson set out why he thought the tribunal would strike out the claim, which broadly accords with the reasons why in due course I did strike out the claim. Furthermore, Mr Donaldson advised the claimant in those letters to go and get legal advice on these matters (which the claimant chose not to do).

159. The claimant had, therefore, been specifically warned of what was likely to happen and the consequences of his pursuing the litigation. He was made fully aware that the respondent was going to pursue an application for costs against him if he continued the litigation. The claimant is intelligent and is very experienced in pursuing employment tribunal litigation. He, therefore, only has

himself to blame for not having taken an earlier settlement offer and for now having to face this costs application.

Seriousness of claimant's conduct

160. It is an important factor in determining this costs application that not only has the claimant crossed the threshold at which I am bound to consider whether or not to make an award of costs but that the conduct in question is particularly serious. This is not just some sort of borderline unreasonable conduct. What the claimant has done is a pre-planned and cynical attempt to entrap fellow employees in order to try and put together the basis of an employment tribunal claim for the purposes of extorting as much money as possible from the respondent. This is unreasonable behaviour of the most serious kind. Furthermore, it is not the first time he has done it; it is only the latest in a long pattern of such behaviour.

Financial means

161. I asked the claimant a number of questions about his financial means. Not for the first time at this hearing, it was difficult to get information out of the claimant and I had to press him for clarity as regards the information I was seeking.

162. The claimant said that he was not working and had no income. In terms of savings, he said that he only had between £200 and £300. He said that he didn't have any assets at all and that he didn't own his own home.

163. He said that he had debts of around £20,000. When I asked him what sort of debts these were, he was very unclear. Eventually he seemed to suggest that the debts were in respect of arrears of rent (he said his rent was about £1,000 per month) and outgoings. Ms Banton pointed out that in his earlier schedule of loss, the claimant had indicated that he had earned around £16,000 from various short-term jobs. The claimant said that this was in the past and that he didn't have any of that money left; and that he didn't have a job at that point. It was at this point that he reiterated that it was hard for him to get a job because of the online reasons from previous tribunal decisions which contained adverse findings in respect of him. He felt this was unfair. He said that the judges in question had got it wrong and again described what was in those online reasons as "misinformation".

164. I asked if he had any savings from settlements from earlier employment tribunal claims. As noted, he had said that there had been "loads" of COT3s (in other words agreements where a particular employment dispute or tribunal claim brought by him had been settled, presumably for a financial sum). He did not give further details of the amounts. However, when asked, he said that all money that he had received from previous claims had been spent.

165. I first address the point about the online reasons. It is the claimant who has behaved in the dishonest and manipulative way that he has. Having heard the reasons for my decision and, knowing from his own experience (and because I specifically told him) that written reasons requested are published online, it is the claimant who has requested them. The actions which led to the reasons for my decision and the decision to request reasons were his. It is not therefore

reasonable for him to suggest that the fact that the written reasons will go online (or indeed that written reasons from his previous claims are already online) is a reason not to award costs, whatever the impact on his ability to obtain further employment is. The fault lies at his door. I do not therefore consider that this impacts at all on whether or not I should exercise my discretion to award costs and, if so in what amount.

166. Secondly, for the reasons set out in my decision above, I have serious concerns about the claimant's honesty. I am not, therefore, prepared to accept as fact the information which he has given me above in relation to his financial means. I therefore make no finding that the claimant is unable to pay the £20,000 of costs sought by the respondent. Therefore, even if I did take financial means into account, I would not have made a finding that the claimant did not have the financial means to pay those costs.

167. However, even if I had accepted that the claimant had very little by way of financial means, I take the view that it is entirely appropriate in the circumstances of this case not to take his financial means into account and to award the full sum of £20,000 sought. That is because of the very serious nature of the claimant's conduct which has caused the respondent to incur these costs, as detailed above. In the circumstances it is entirely just that the full amount sought is ordered.

Conclusion

168. I therefore grant the respondent's costs application in the full amount sought and make an order that the claimant pay the respondent's costs of £20,000.

Payment

169. The claimant then asked whether he had to pay the sum immediately. I explained that the debt was due immediately but that if he wanted to liase with the respondent to try and agree a programme of staggered payments over time, that was up to him to do. Similarly, it was up to the respondent as to whether or not it was prepared to agree to such a programme or whatever other action it might take.

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Employment Judge Baty

Dated: 3 December 2024

Judgment and Reasons sent to the parties on:

11 December 2024
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For the Tribunal Office