EMPLOYMENT TRIBUNALS

Claimant: **Ms C Birch**

Respondents: **(1) The Governing Body of Fulford Scool**
(2) City of York Council

JUDGMENT

The application for costs made on behalf of the Respondents and dated 23rd August 2018 is refused.

REASONS

1. The application is made under rule 76 (1) (a) of the Employment Tribunal Rules 2013, on the grounds that in the bringing or conducting of these proceedings (or part of them) the Claimant acted unreasonably.

2. It is not suggested, even though the Claimant was wholly unsuccessful, that the claim had no reasonable prospect of success.

3. Mr Birch on behalf of the Claimant submitted a very short reply to the application dated 30th August 2018.I do not, in the circumstances, require any additional response.

4. It is not necessary to order a hearing under rule 77: it can properly be dealt with on the basis of the written representations.

5. The Claimant is not and has not been legally represented throughout these proceedings. It is not, however, without much more unreasonable conduct of Employment Tribunal proceedings, , not to have a obtained legal advice. In any event, I accept Mr Birch's explanation that the family could not afford to go to a solicitor.

6. Had she had professional advice or representation then no doubt the case would have been conducted differently. The Claimant has unfortunately made a number of mistakes arising either from a misunderstanding of the legal principles involved or from a failure fully to grasp the material issues. I am a satisfied, however, that she and her husband have genuinely tried to do their best in difficult circumstances for them. That is not unreasonable conduct.

7. The case was effectively concluded within the allocated 10 day hearing window: a

reserved decision was always highly probable in a case of this nature, and the non-attendance of the Claimant herself, potentially to listen to an oral judgment, at the end of the hearing was not her fault.

8. Although the Claimant certainly appears to have overestimated the potential value of her claim from the outset, it was clearly – if successful- a high value claim. It is not unreasonable conduct to have declined judicial mediation (which is, of course, entirely voluntary) nor is it unreasonable for her to have refused an offer of settlement contingent upon her agreeing a termination of employment and without, of course, any admission of liability.

9. It is not, as Mr Cairns suggests "perverse" for the Claimant to have emphasised the importance of the non-financial elements of her claim. A declaration of the Claimant's rights in a discrimination case, or indeed a "whistle-blowing" claim, is still the primary remedy.

10. Although issues on limitation were identified by no means all of the complaints were potentially out of time. Whether or not complaints formed part of a series of events was a factual question that could only be decided after hearing evidence. On the discrimination claims it was always alive issue as to whether the tribunal might have exercised its discretion to extend time in any event.

11. In short there is nothing in the Respondent's application which properly identifies any unreasonable conduct in the course of these proceedings such that I should exercise my discretion to award costs.

Employment Judge **Lancaster**

Date: 21st September 2018

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