# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Deepali Trivedi

**Respondent:** Chesterfield Royal Hospital NHS Foundation Trust

# FINAL HEARING

**Heard at:** Nottingham (in public) **On:** 14 June 2018

**Before:** Employment Judge Camp (sitting alone)

**Appearances**
For the claimant: in person
For the respondent: Ms L Gould, counsel

# JUDGMENT

(1) By consent, the claimant's claim for £428 in respect of accommodation is dismissed upon withdrawal.

(2) The rest of the claimant's claim fails and is dismissed.

(3) The claimant must pay £2,519.00 towards the respondent's costs, pursuant to rules 76(1)(a) and (b).

(4) This Judgment was made and took effect on 14 June 2018.

# REASONS

1. This is the written version of the reasons that were given orally at the hearing, written reasons having been requested by the claimant on the day.

2. The claimant, who is also known as Dr Trivedi, worked for the respondent as an Associate Specialist in Ophthalmology between November 2016 and 15 May 2017 at the Chesterfield Royal Hospital. She presented her claim form, without – as far as I can tell – having gone through early conciliation, on 13 August 2017. She eventually went through early conciliation from 22 August to 5 October 2017. Be that as it may, no early

conciliation or other jurisdictional points were taken before me; this was a full trial on the merits.

3. This is a contractual claim and it is also (at least in part) a claim under the unauthorised deductions provisions in the Employment Rights Act 1996. So far as the law is concerned, I do not think I need to set out more than that the issue for me is whether the claimant was contractually entitled to the things that she is claiming. The facts don't seem to be in dispute to any relevant extent; I am not really concerned with the facts at all, but with pure contractual interpretation.

4. The first of the three things originally claimed by the claimant was an amount equivalent to 40 percent of her salary for the out of hours work that the respondent agrees she did. She claims £15,000-odd for that. It had initially been understood by the respondent (and, I have to say, by me) that this claim was based principally on a guidance note about pay of August 2010 which appeared to apply to junior doctors and not to Associate Specialists like the claimant. And at the outset of the hearing, the claimant appeared to confirm to me that that was indeed the basis of her claim.

5. It became clear subsequently that this was not so. The claimant accepts that the particular thing she referred me to in the guidance note applied only to junior doctors and not – at least not directly – to herself.

6. The claimant continues to make that claim and I will explain in more detail what the actual basis of it is in a moment.

7. The second claim was for £428 paid for accommodation. That claim was by consent dismissed upon withdrawal part of the way through this hearing and I will say no more about it.

8. The third claim – a claim still being pursued – is a claim for relocation expenses stated in the claim form to be for a sum of up to £2,500. In relation to that, the claimant is relying on part of the old Whitley Councils agreements. What she is now claiming is a sum of £2,555.72. This is the [alleged] cost which was deducted from her salary for accommodation during her employment with the respondent. She has and had a house in Birmingham. Although I have not been told this, she presumably needed to be closer to the hospital in Chesterfield. For that hospital accommodation she was, she says, charged a total of £2,555.72. It is not relocation expenses as such but the cost of her being in accommodation near to the premises from which she worked.

9. I shall start with that relocation expenses claim. The claimant confirmed to me during the hearing that the provision in the part of the Whitley Councils agreements she relies on (section 26) is paragraph 4, which states: "*Assistance may also be granted, at the discretion of the employing authority, to employees who as a result of taking up employment with the authority either need to move their home or incur extra daily travelling expenses.*"

10. Attached to that part of the Whitley Councils agreements are some examples in an annex. The claimant says she relies on example 9, which states: "*The allowance may be limited to the extent by which ongoing costs (eg rent, mortgage interest etc) in the new area exceed those in the old area. However, where there has been a demonstrable improvement in the standard of accommodation the authority may restrict the allowance by reference to the price or rent of accommodation in the new area roughly equivalent to that previously owned or rented."*

11. The Whitley Council agreements do not, then, compel the respondent to do anything and give the claimant no entitlement to anything – they simply set out what an employing authority like the respondent may, in its discretion, choose to do.

12. The claimant alleges that she was never given a contract, but I have seen a contract which the respondent says is the one that applied to her. Suffice it to say that that contract does not give her a contractual entitlement to anything relevant to this part of her claim. It states, under the heading of removal expenses: "*The Trust will consider a relocation package for this post*". So even if (which the claimant seems to deny) that is the contract, it does not provide an entitlement to what she is claiming either. In addition, there is a relocation expenses policy – which the claimant does not rely on in any event – which also does not help her.

13. Further, the claimant confirmed to me that at no stage did she have an oral agreement with the respondent that expenses would be paid for this accommodation, or indeed for anything else relevant to this part of her claim. She was also not alleging that she made a particular demand for payment of any particular sum which was not met, or was refused, or anything of that kind. Putting her case at its highest in this respect, what she says is that she asked to see the relevant policies and was told that they were being updated.

14. There was, then, no contractual agreement with the respondent to pay relocation expenses at the start of her employment and there was no agreement or promise to pay them later. Accordingly, there is simply no legal basis for this claim and I dismiss it.

15. I then move on to what has taken up most of our time today, which is the claimant's claim for 40 percent additional remuneration.

16. It is clear the claimant feels she has been inadequately remunerated for her on-call work. She told me that she had undertaken on-call work because she wanted to earn more money. It is equally clear that she expected to be paid significantly more for it than she was paid.

17. During her closing submissions, the claimant made reference to the rates of pay of locums and the fact that they were paid for every hour on-call, whether they were

working or not. Whether or not that is the case, the fact that locums may be entitled to be paid extra under their contracts does not give rise to any right to the claimant to be paid under her contract. They are different contracts with different rights and responsibilities.

18. To derive a right to 40 percent in addition to her basic wage, or indeed to any other percentage for out of hours work, the claimant has to have a contractual right to it. She is not saying that she was promised it orally, so we have to find it, if it is anywhere, within the contractual documentation.

19. As I have already explained, the claimant's 40 percent figure comes first from a right which junior doctors have under a 2002 contract. The bottom line there is that she was not a junior doctor (and she does not claim to have been a junior doctor) so she cannot derive a right to 40 percent from that.

20. In her own terms and conditions, which are the 2008 national *Terms and conditions of service speciality doctors* ("2008 terms"), there is a clear right to 4 percent extra for agreeing to be on-call. The right is to 4 percent and not to 40 percent and the claimant agrees she was paid that 4 percent.

21. Where does the right to 40 percent allegedly come from? In relation to this, we spent a great deal of time looking at schedule 8 to the 2008 terms, the relevant parts of which are as follows:

> ***Out of Hours work***
>
> *1. The following provisions will apply to recognise the unsocial nature of work undertaken out of hours and the flexibility required of doctors who work at these times as part of a more varied overall working pattern.*
>
> ***Predictable Out of Hours Work***
>
> *2. For each Programmed Activity (including Additional Programmed Activities) undertaken during Out of Hours, there will, by mutual agreement, be:-*
>
> *a) a reduction in the timetabled value of the Programmed Activity itself to 3 hours, or*
> *b) a reduction in the timetabled value of another Programmed Activity by 1 hour.*
>
> *3. If a Programmed Activity undertaken Out of Hours lasts for 4 hours or more, an enhanced rate of pay of time and a third may be agreed.*
>
> *4. Where a programmed activity falls only partly Out of Hours, the reduction in the timetabled value of this or another Programmed Activity will be on an* [sic] *pro*

*rata basis. If an enhancement to payment is made, this will be applied to the proportion of the Programmed Activity falling Out of Hours.*

22. I have tried hard to understand what paragraph 2 of schedule 8 in particular means. I have, though, been told what it is supposed to mean and perhaps I do not need to concern myself with that to any great extent, but only with what the claimant alleges it means, insofar as that is relevant.

23. What the claimant told me in submissions is that this document gives two options to someone who does out of hours, on-call work: either they get paid or they take time off as Programmed Activity. Some doctors take the time off; she wants to get paid. Her case – as it emerged over the course of the hearing – is that by virtue of the provisions that I have just read out, everyone who is on-call should get paid extra for the hours they spend on-call. She adds to her argument that whenever you work out of hours – which is (she contends) to be interpreted in her case as after 5 pm and before 9 am, because she worked 9 to 5 – you are undertaking Programmed Activity.

24. I asked the claimant how she got to 40 percent of her total salary, because following her argument through as best one can, one can see how she might possibly think she should get an additional one third of her salary, but not an additional 40 percent. Her logic (and I have to confess I have found it difficult to follow, but I have been through it with her a number of times and she has repeated much the same things without providing further clarification or explanation) is:

    24.1 outside of 9 to 5, she worked on average 10 hours per week;
    24.2 a Programmed Activity is normally 4 hours. The respondent accepts that this is so;
    24.3 by virtue of paragraph 2 of schedule 8 (set out above), if a Programmed Activity takes place Out of Hours, 3 hours' worth of work is counted as 4 hours' worth. The respondent also accepts this. For my part, I have struggled to get that interpretation out of the wording of that paragraph, but I am prepared for present purposes to accept that that is what it means;
    24.4 10 hours a week is 3 ⅓ lots of 3 hours, which means 3 ⅓ Programmed Activities;
    24.5 for reasons I am not entirely clear about, the 10 hours a week is not just, according to the claimant, Programmed Activity but Additional Programmed Activity, meaning the claimant did 3 ⅓ Additional Programmed Activities;
    24.6 paragraph 17 of schedule 14 to the 2008 terms is headed "*Additional Programmed Activities*" and states, "*The annual rate for an Additional Programmed Activity will be 10% of Basic Salary"*;
    24.7 she should get 40 percent extra and not 33.33… [recurring] percent extra because she was on-call for 24 hours at a time. So when she was on-call, she was doing her normal job (9 to 5) but, additionally, between 9 am and 5 pm she was on-call and that meant extra work during those hours, not just extra work between 5 pm and 9 am, and this extra work between 9 am and 5 pm should be reflected by rounding up her entitlement to 40 percent;

24.8 it should also be rounded up to 40 percent because that mirrors what junior doctors are entitled to under the contractual provisions referred to towards the start of these Reasons;

24.9 the claimant concedes that it is not written anywhere that the percentage sum should be rounded up, but argues it is logical given the basis upon which junior doctors are paid for out of hours work.

25. That was the beginning and the end of the claimant's argument in support of her entitlement to a sum equivalent to 40 percent of her basic wage. Any other points in her favour were taken by me [the Employment Judge], on my own initiative.

26. There are numerous reasons why the claimant's argument is plainly wrong, both as a matter of logic and of arithmetic. I shall now explain the main ones.

27. Schedule 8, which is the starting point of the claimant's argument, applies to "*Programmed Activity*", which is a defined term, undertaken "*Out of Hours*", which is also a defined term.

28. In the contract, "*Out of Hours*" is defined as "*any time that falls outside of the period 0700 to 1900 Monday to Friday and any time on a Saturday or Sunday or statutory public holiday*". This is the only definition of that phrase in the contract. There is no basis in any of the contractual documents or anywhere else for the claimant's argument that because she worked 9 to 5, the phrase should be defined differently in her particular case.

29. The way in which contracts work is that terms are defined. In theory, you could have at the start of a contract something stating, "When the word 'black' is used in this contract, it means white". If that was in a contract, you would have to read the word "black" as "white" throughout it, even though "black" normally has the opposite meaning. Similarly, "*Out of Hours*" in this contract means "*outside of the period 0700 to 1900 Monday to Friday …* [etc]" because that is how it is defined. It is not defined by reference to when the employee normally works.

30. The part of the claimant's argument that relies on "*Out of Hours*" meaning "outside of normal working hours" or "after 5 pm and before 9 am" is therefore plain wrong.

31. "*Programmed Activity*" is defined in the contract, as "*a scheduled period, normally equivalent to 4 hours, during which a doctor undertakes Contractual and Consequential Services.*"

32. "*Contractual and Consequential Services*" is defined as meaning, "*the work that a doctor carries out by virtue of the duties and responsibilities set out in his or her Job Plan and any work reasonably incidental or consequential to those duties…..*"

33. In other words, to be a Programmed Activity, it has to be something set out in a Job Plan. Job Plan is another defined term, but the precise definition does not matter for present purposes because the parties agree that all that was in the claimant's Job Plan was her basic 40 hours a week. The claimant is not alleging that when she was on-call Out of Hours, she was doing something that was set out in her Job Plan or that was reasonably incidental or consequential to the duties set out in her Job Plan.

34. Accordingly, the claimant's claim for 40 percent of salary does not get anywhere because, whatever else, the part of the contract she relies on only applies to "Programmed Activity" and when she was working Out of Hours, she was not, in accordance with the express contractual terms, doing Programmed Activity.

35. Further, in order to get to the claimant's 40 percent we have gone to schedule 14. (She has never been relying on paragraph 3 of schedule 8, nor been able to explain why, if any of her logic is sound, we should look outside of that paragraph and the entitlement it potentially gives[1], in particular circumstances, to time and a third). Schedule 14 is concerned just with Additional Programmed Activities.

36. The definition of Additional Programmed Activities in the contract is: "*Additional Programmed Activities may be offered to doctors by their employer in addition to the doctor's contracted number of Programmed Activities to reflect additional duties or activities in accordance with the provisions of schedule 7.*" I do not think I need worry particularly about schedule 7 because neither party has relied on it.

37. I agree with respondent's counsel that, logically and in accordance with the rest of the contract, something cannot be an Additional Programmed Activity unless it also satisfies the definition of Programmed Activity. For example, if we go back to schedule 8, paragraph 2 (which I quoted earlier) begins, "*For each Programmed Activity (including Additional Programmed Activities) …*". Additional Programmed Activities are, then, types of Programmed Activities. I note that the claimant has not argued otherwise.

38. Because being on-call Out of Hours is not, in the claimant's case, a Programmed Activity, it cannot be an Additional Programmed Activity either, so schedule 14 is irrelevant.

39. Further, (although I am not at all sure of the claimant's position; there is a lot of confusion in what she put forward) the claimant's argument seems based on Out of Hours work being not just Programmed Activity but contracted Programmed Activity, i.e. Programmed Activity she was contracted to do from the outset. Additional Programmed Activity is, "*in addition to the doctor's contracted number of Programmed Activities*", i.e. is not contracted Programmed Activity.

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[1] In that it "*may be agreed*".

40. Moreover, an Additional Programmed Activity is something that is offered by and agreed with the respondent. The respondent asks the doctor whether they are willing to do a particular thing and that thing, if accepted, become one Additional Programmed Activity, however many hours it lasts. Programmed Activity is "*normally equivalent to four hours*", but this does not mean that every Programmed Activity or Additional Programmed is 4 hours, still less that any four hour period equals one Programmed Activity or Additional Programmed Activity. One does not ask how many hours the activity takes on average per week (or per month or per any other period), divide it by 4 (or 3 if it takes place out of hours), and end up with the resulting number of Additional Programmed Activities. That is not how the contract is set up; there is no basis in the contract for doing this. So if it were the case that the on-call Out of Hours the claimant agreed to do – one in eight – was Additional Programmed Activity, it would be just one Additional Programmed Activity, for which she might have been entitled to an additional 10 percent under schedule 14, not 33 ⅓ percent or 40 percent.

41. Finally, the claimant's argument that gets her from 33 ⅓ percent to 40 percent has no legal or factual basis at all. Apart from anything else, if the claimant's argument based on schedule 8 were right, it would only apply to Programmed Activity undertaken Out of Hours. Even if she were right about Out of House being after 5 and before 9, her argument would not apply to the full 24 hours she was on-call because 8 of those hours would not qualify as Out of Hours; she would still be left with just 10 hours on average per week of Additional Programmed Activity. Certainly, what junior doctors are entitled to under their contracts, which appears to be the claimant's alternative basis for rounding up, can have nothing to do with the claimant's entitlement.

42. There is a further point I have not mentioned yet, which has been a large part of the respondent's argument before me. It concerns schedule 6 of the 2008 contract, which is headed "*Recognition for Unpredictable Emergency Work Arising from On-Call Duties*".

43. The respondent has explained – and this fits with what is in schedule 6 and I accept it is accurate – that the way in which schedule 6 works is that:

    43.1 if a doctor agrees to be on-call Out of Hours, as the claimant did, then they are paid their 4 percent come what may;
    43.2 when someone is on-call, the amount of actual work they do – as opposed to time spent waiting for a call – will vary from day to day and week to week;
    43.3 if the doctor finds they regularly end up doing more than 6 hours a week of actual work when on-call, they can ask to be given an Additional Programmed Activity;
    43.4 6 hours a week is specified because it is equivalent to two Out of Hours Programmed Activities;
    43.5 if the respondent agrees to the doctor's request, the Additional Programmed Activity goes on the doctor's Job Plan and they will then get paid 10 percent extra in accordance with schedule 14.

44. What the respondent highlights about schedule 6 is that it draws a distinction between "*predictable*" and "*unpredictable*" emergency work. Predictable work, on the respondent's case, is something which is scheduled.

45. "*Predictable Emergency Work*" is: "*emergency work that takes place at regular and predictable times, often as a consequence of a period of on-call work (e.g. post-take ward rounds). This should be programmed into the Working Week as scheduled Programmed Activity.*"

46. "*Unpredictable Emergency Work arising from on-call duties*" is defined as: "*work done whilst on-call and associated directly with the doctor's on-call duties (except in so far as it take place during a time for scheduled Programmed Activities), e.g. recall to hospital to operate on an emergency basis….*"

47. The respondent's case is that when the claimant was on-call, she was never – or hardly ever – doing predictable work because she was only doing work when she was giving advice over the phone or going into the hospital in order to see a patient. Although it was predictable that from time to time people would come into A and E and need the claimant's services, it was not predictable when that would happen, or indeed if it would happen at all during any particular on-call shift.

48. The claimant's case is that when she was on-call she was doing predictable work because she knew – i.e. she could predict – when she would be on-call.

49. Schedule 6 does not fit with the claimant's definition of predictable work, in my view. It is plainly envisaged within these terms and conditions that the definitions of predictable and unpredictable work are exactly as the respondent would have them.

50. Why does any of this matter in the present case?

51. If the claimant were right in her principal argument, then there would be no need to have a distinction between predictable and unpredictable work. There would, in fact, be no such thing as unpredictable work because all time spent on-call Out of Hours would always be Programmed Activity / Additional Programmed Activity and schedule 6 would be redundant. Most of schedule 8 would be redundant too, because (at least) all time spent on-call Out of Hours would attract extra pay.

52. This is, then, yet another reason why the claimant's core claim – that all time on-call Out of Hours was Programmed Activity for which she was entitled to be paid at an enhanced rate – must be wrong. If the claimant were right, there would be no need for large parts of the contract. The contract would simply state something like, "If you agree to do out of hours work, you will get paid 44 percent extra" (i.e. the 4 percent to which everyone agrees she had a contractual right plus the 40 percent to which she claims to have a

right) or, if the claimant were at least half right, something like, “Time spent on-call Out of Hours is paid at a rate of time and a third.” The reason the contractual provisions are more elaborate and complicated than that is that the claimant is wrong; Out of Hours work and Programmed Activity are not essentially the same thing; the claimant is asking me to ignore important things that are in the contract and to read things into the contract that aren’t in it.

53. For all of those reasons, I am afraid the claimant’s claim for 40 percent extra pay fails and is dismissed.

## COSTS

54. After I gave judgment in the respondent’s favour, the respondent has made an application for costs under rule 76(1). The application for costs is made on the basis of an argument that the claim had no reasonable prospect of success and/or that because it had no reasonable prospect of success, it was unreasonable for the claimant to pursue it; or, at least, unreasonable for the claimant to pursue it after receipt of a costs warning letter.

55. A costs warning letter was sent dated 17 April 2018. I refer to it. It does not set out all of the arguments which have found favour with me today, but that does not surprise me because the basis upon which the claimant was arguing she was entitled to 40 percent of salary – that being her main claim – did not become clear until part way through this hearing today. It was certainly not at all clear from her witness statement, for example, let alone from her original claim form.

56. The costs warning letter explains that costs can be awarded; it suggests that she takes advice and it warns her that an application for costs will be made. There is nothing wrong with the costs warning letter as costs warning letters go; it is a perfectly proper and reasonable example of its kind.

57. The respondent’s application for costs really boils down to whether I believe the claim had no reasonable prospect of success. The ‘unreasonable conduct’ part of the costs application does not add much, if anything, to that.

58. “*no reasonable prospect of success*”: what does that mean? It means, in summary, that the claim never had any significant chance of success.

59. I must be very careful when dealing with a costs application made on this basis that I do not work with the benefit of 20:20 hindsight. It is easy to fall into the trap of thinking that because the claimant has lost, she was always bound to do so. It does not automatically follow from the fact that a claimant has lost that her arguments were never any good.

60. However, we have been concerned here with legal arguments. This is not a case where, for example, the evidence did not quite go right or anything like that. What we were really dealing with was undisputed evidence and the interpretation of contractual documentation. The claimant's submissions about how her contract with the respondent should be interpreted were entirely without merit.

61. In short, I accept the respondent's argument that this claim never had any reasonable prospect of success. This goes both for the relocation expenses claim and for the 40 percent claim.

62. So far as concerns the relocation expenses claim, I really cannot understand how the claimant – an obviously intelligent and sophisticated woman – ever thought she had a prayer. She was relying on a document which said, in terms, that paying expenses is something that "*may*" be done on a discretionary basis. She was unable to point to any document which said, or came anywhere close to saying, that she had a contractual right to a penny.

63. I also agree with counsel's assessment in submissions that the claimant's basis for claiming the 40 percent was utterly confused. The claimant has complained, as if this were grounds for criticising me, that I said during the hearing that I did not understand it [the basis of the claim]. I said that because I did not [understand it]. And the reason I did not understand it is that it just did not make sense; it has never made any sense.

64. As with the relocation expenses claim, the claimant was unable to point to any document which says anything to the effect that she was entitled to what she was claiming. What she was claiming was a sum equivalent to 40 percent of her entire basic wage. Had she been claiming for time and a third for time spent on call Out of Hours on the basis of paragraph 3 of schedule 8, it might have made little bit more sense, but she wasn't; that was never the basis of her claim. She was not claiming time and a third and she certainly was not claiming time and a third for Programmed Activity undertaken Out of Hours (for which, as I understand it, a doctor would get time and a third on the additional hours, effectively as an overtime rate). Such a claim would still have failed, but would at least have had some coherence. But that was not the claim the claimant was putting forward; the only person during this hearing suggesting that paragraph 3 of schedule 8 could provide the claimant with a basis for a claim was me.

65. The case the claimant was putting forward seemed to boil down to her dissatisfaction with what she was being paid compared with locums and to the fact that junior doctors were paid 40 percent. Yet again, I cannot conceive why, if she gave any real thought to her position at all – as she ought to have done, particularly after receiving the costs warning letter – the claimant convinced herself that her arguments were good ones. She clearly did think they were. I am not suggesting that she made this claim in bad faith. But, as I have already said, she is an intelligent woman. She was on a good salary and was more than capable, I am sure, of getting advice from a legal professional or somebody

else who knew what they were talking about and understanding and acting on it. Doing so would have paid dividends.

66. The claimant brought a claim with no reasonable prospect of success. She was then given a costs warning letter. That really ought to have prompted her to take some advice. Given the way she pursued the claim at this hearing, she cannot have been following advice from anyone competent. Either she chose not to take suitable advice or she chose to ignore the advice she received. She does not come before me saying, "*I was advised I had a really good claim and that is why I brought it*", or anything like that. And I anyway cannot imagine anyone with any expertise advising her that she had a great claim and to 'go for it'.

67. The claimant has proceeded in the teeth of a costs warning letter. She is a woman of reasonable means, in that even though she may be overdrawn at the bank at the moment, she has a relatively high earning capacity. She has about £160,000 worth of equity in her property. I do not think that any injustice would be done to her by ordering her to pay costs. And I think an extreme injustice would be done to the respondent by not asking her to pay costs. As the respondent pointed out, this is public money. It is true that awarding costs is exceptional in the employment tribunals, but why should the public bear the brunt in circumstances like these, where somebody sophisticated, who has the ability to get professional advice, chooses to go ahead with a hopeless claim, even following receipt of a costs warning letter? I am afraid the claimant is the author of her own misfortune so far as costs are concerned. In conclusion, I am minded, in the exercise of my discretion, to award costs.

**Summary assessment of costs**

68. Having decided that in principle it is appropriate for me to make a costs order, I then have to assess costs. I do so on the standard basis, so the respondent has to persuade me that it was reasonable to carry this work out and that the amount charged for carrying out the work was reasonable.

69. The respondent has filed a costs schedule, albeit late in the day and not in a form that would comply with the Civil Procedure Rules. (There are, though, no rules in the employment tribunals requiring a cost schedule at all, let alone rules requiring one to be filed in a particular form at a particular time). If it were a complicated and lengthy costs schedule, I would be more concerned about its late filing. But it is a simple costs schedule which sets out a number of hours against an hourly rate for correspondence, telephone attendance, drafting or preparing the case, perusing or considering papers and then counsel's fees on top. VAT is not charged.

70. The total claimed is £4,383.00. That is not a disproportionate amount. This was not a straightforward case, despite its relatively modest value. Had the claimant won, further claims from other doctors could well have followed.

71. I am told that when the costs warning letter was sent, the costs that had been incurred to that point were £1,000. Counsel realistically accepts – without conceding the point – that I was always in practice going to knock £1,000 off the total claimed on the basis that it was unreasonable for the claimant to pursue the case following receipt of the costs warning letter and, perhaps (giving her the benefit of the doubt), not before.

72. On the same basis that I have knocked £1,000 off the Bill, it is appropriate to knock a further £500 off. This is an estimate of the costs that would have been incurred by the respondent in the time it would reasonably have taken the claimant to take legal advice upon receipt of the costs warning letter and to have acted on that advice. £500 is necessarily a rather arbitrary figure as the costs schedule is not broken down in terms of when particular costs were incurred.

73. I have already mentioned the claimant's means and decided, essentially, that they are not relevant because (although I don't suggest it would be easy for her to pay) she has sufficient means to be well able to pay a few thousand pounds.

74. The claimant has said it is not fair that she should be expected to pay this. The answer to that is: why is it fair for the respondent to have to pay it, given any costs I am ordering the claimant to pay were reasonably incurred defending the claimant's unreasonable claim? Somebody is paying this. If the question were whether it would be fairer for the claimant or for the respondent to pay these costs – it isn't – the answer would undoubtedly be the claimant, given that she brought a claim with no reasonable prospects of success to trial without, apparently, getting proper advice on it even after receiving a costs warning letter.

75. The hourly rates are reasonable. The highest hourly rate charged – even for a partner – is £155. I am more familiar with Birmingham than Nottingham rates, but that is definitely well under the guideline rate for a grade A fee-earner. In a case like this, you would expect a grade A fee-earner to do a little bit at the very least. In fact, all or almost all work has been done by a Senior Solicitor – that would be grade B or A fee-earner – charging £140 an hour. That is well below the guideline rates for grade A or B and is around the rate for a grade C fee-earner. The hourly rates are, in short, fine.

76. Counsel's fee is reasonable, bearing in mind this has been a full day in tribunal needing preparation. It may ultimately have proved to be quite a straightforward case to do as counsel, but if you estimate how many hours' work was done, the hourly rate is probably around the same as that which the solicitors are charging. It may even be less than that, bearing in mind preparation time and travel time and all the rest of it.

77. I am taking 2.6 hours off for perusing or considering papers because I am not quite sure what that is. That apart, what is claimed is reasonable in all respects.

78. I am therefore starting with £4,383, deducting £1,500, and deducting a further 2.6 hours at £140. The final figure is: £2,519.00.

18th July 2018

SENT TO THE PARTIES ON

20 July 2018

FOR THE TRIBUNAL OFFICE