

Tribunals more willing to make costs orders against employees

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In employment tribunal litigation, both parties usually bear their own costs. However tribunals do have the discretion to

award costs orders against parties who have '*acted vexatiously, abusively, disruptively or otherwise unreasonably*'. Historically, this power has been exercised rarely but a couple of recent cases suggest that the tide is beginning to turn.

In *Vaughan v London Borough of Lewisham*, Ms Vaughan brought nine unsuccessful claims against her employer. At the end of the hearing, the Tribunal ordered her to pay £87,000 towards Lewisham's costs despite the fact that:

1. She was unrepresented, unemployed and of limited means;
2. No costs warnings had been provided to her;
3. No deposit order was sought against her; and
4. A settlement offer of £95,000 was made to her.

The Employment Appeal Tribunal defended the costs order on the grounds that Ms Vaughan had advanced a case of '*mass conspiracy*' unsupported by evidence. The absence of a deposit order or costs warning did not suggest the claims had merit and whilst the settlement offer might seem extraordinary, it simply reflected the commercial reality arising from the fact that the employer was facing the expense of a 20 day hearing. As for Ms Vaughan's limited means, there was a realistic prospect that she would work in due course and it was for the county court to agree a repayment plan.

In *Howman v Queen Elizabeth Hospital NHS Foundation Trust*, Mr Howman was dismissed for uploading a fake letter from the Trust's CEO onto the Trust's intranet. Following an unsuccessful claim for unfair dismissal, the Tribunal ordered that he pay the Trust's costs of £43,000. The Tribunal said he was aware that an application for costs would be made against him if he lost and was advised by a judge in an interim hearing that he should carefully consider his position in light of the strong evidence against his case.

However, on appeal, it was held that the Tribunal had not

considered whether it was appropriate to make an order that would wipe out Mr Howman's life savings and force him to sell his family home. The case has been sent back to the Tribunal for them to consider whether to modify the amount of the award.

These cases are difficult to reconcile but it seems clear that Tribunals are becoming more willing prepared to make stringent costs orders against individuals bringing dubious claims even if they have limited means. This is particularly the case when claims are brought against public sector bodies funded by the taxpayer. Whether a similar order would be made against an individual bringing a claim against a private sector employer remains to be seen.

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