

**Birmingham Employment Tribunal
13th Floor
Centre City Tower
5-7 Hill Street
Birmingham
B5 4UU**

Your ref:

Our ref: PB/IH/Tyson/9357

Please ask for: Paul Bownes

6 June 2014

Dear Sirs

**Mr JP Tyson, Mr NC Brown & Ms L Smith v MAG (UK) Ltd
Case Numbers 1318450/2013, 1320563/2013, 1320531/2013**

Further to the above matter and to the Judgment of Employment Judge Kearsley sent to the parties on 9 May 2014 concluding the proceedings, the Claimants now make an application for a costs order under Rule 76 of the Employment Tribunal Rules of Procedure.

The Claimants contend that for the entirety of the proceedings, the behaviour of the Respondent (namely in the form of its representative, Mr Neil Liversidge) has been unreasonable and regularly abusive. Similar complaints were made at the hearing before Employment Judge Coaster on 1 November 2013, and the Tribunal noted that there was a strong risk of a costs application being made.

The manner in which the Respondent's representative has spoken about the Claimants, the inappropriate way in which he has spoken to the Claimant's solicitor and the appearance that these proceedings were being treated as a laughing matter are, in the Claimants' submission, indicative of unreasonable behaviour.

The Respondent's approach to the Claimants is evident from the ET3s. In the ET3 in respect of Nich Brown, for example, the Claimant is consistently referred to merely as 'Brown' whilst other parties are afforded the appropriate honorific such as 'Mr Meredith'. This has been consistent throughout the proceedings, and indeed was commented on by Employment Judge Kearsley at the remedy hearing. The Respondent has also gone further in correspondence with the Claimant's solicitor, sending one email dated 3 September 2013 entitled '*Your Silly Client Tyson*' and another dated 29 August 2013 which contained the sentence '*Your clown – sorry, your client – Tyson has been busy making a fool of himself*'. On 5 September 2013 he also emailed the Claimants' solicitor and wrote '*Hope you're enjoying your evening. I'm sitting here with my huskies, drinking Pol Roger and listening to your clients shooting themselves in both feet with a Thompson. Bliss!*' As the Tribunal will appreciate given the latter quote, the Respondent's representative felt it appropriate to email at any

Directors: Ian Hass LLB (Hons) Jane Ellis BA (Oxon)
Associate Director: Helen Morton BA (Hons)
Associate Solicitor: Paul Bownes LLB (Hons)

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time of the day and night (in this case 21:46), meaning that the Claimants' solicitor had a deluge of emails to deal with.

The Respondent also felt that it was able to comment on the Claimants and their decision to pursue proceedings; on 28 May 2013 the Respondent's representative emailed the Claimant's solicitor and said *'In the event that Ms Smith is foolish enough to spend money bringing a claim, then twelve months hence, as well as being sadder and wiser, she will also be considerably poorer.'* This reflects a common position adopted by the Respondent and ignores the Claimants' legal right to bring a claim should they wish. On 25 June 2013 the Respondent's representative wrote to the Managing Partner of the Claimants' solicitor's firm and stated *'Your clients have no case. We behaved quite properly. As already advised therefore, there will be no offers of out of court settlements of any description.'* Later in the same letter he carried on *'In summary Mr Hass, our offer to your clients is nothing, zero, rien, buggler all, diddly-squat – squared. Not even the phone number of The Samaritans, which they can google if they need it.'* This was followed by a letter dated 27 June 2013 which offered a "reminder" of the Respondent's offer in the form of '£0.00' in large red type taking up about a third of the letter. Not only does this demonstrate the Respondent's attitude to engaging with what the Tribunal has found were good claims, but also their general approach that the proceedings were somehow a form of amusement for them. On 20 July 2013 the Respondent's representative emailed the Claimants' solicitor and wrote *'We look forward eagerly to receiving notice that your clients have filed for a Tribunal, which we are sure will be an enjoyable and entertaining experience. For us at least.'* In an email to the Claimant's solicitor dated 6 September 2013, the Respondent's representative discussed proposed witnesses and said *'Hopefully you'll be calling Pyatt and Powell. (Licks lips in anticipation!).'*

The Respondent's representative also appeared to take pleasure in sending completely irrelevant emails to both solicitors who have had conduct of this matter on behalf of the Claimants. On the evening of 15 August he emailed a YouTube link in an email entitled *'As the great Kenny Rogers said...'* and containing the lines *'You got to know when to hold 'em, know when to fold 'em, Know when to walk away and know when to run.'* The YouTube link is presumably a video of that song. This was followed five minutes later by a further email entitled *'And as Al Pacino said...'* with another link to YouTube. On 28 October 2013 the Claimant's solicitor was sent a 4 line quote from James Graham, 1st Marquess of Montrose, and by the time of the remedy hearing this was still happening; on Saturday 29 March 2014 the Claimants' solicitor received an email with 5 lines from Henry V, which was followed up the next day with a more complete citation as the Respondent's representative had noticed he had failed to quote which scene of the play it came from. The only effect of these emails was take up more and more of the Claimants' solicitors' time with completely irrelevant communications.

Unfortunately the communications with the Claimants' solicitor were also personally abusive. On 14 June 2013 the Respondent's representative stated in an email that *'Lawyers don't frighten or impress me, so don't delude yourself; you won't be the first I've had for breakfast. The last who came a cropper taking me on was a QC working for the DTI in a case at the High Court.'* On 25 June 2014 the Respondent's representative wrote to the Managing Partner of this firm and said, with reference to the Claimants' solicitor, *'The first is that Ms Sharp is incompetent. The second is that she fancies herself a hand at MI6 style disinformation (...) As it is hard to believe that anyone can be so incompetent, I have to believe that the latter explanation holds good (...) In this event maybe Ms Sharpe should change her name to Jane Bond.'* A further letter to the Managing Partner dated 27 June 2013, again in reference to the Claimants' solicitor, asked *'Does this lady never learn?'* In an internal email to the Respondent's National Committee, the Respondent's representative stated *'They resigned and hired a junior solicitor (a nice kid I think, from looking at her Linked In profile – she*

works for animal charities) but not very sharp despite her name.' On 29 August 2013 the Respondent's representative then signed off an email to the Claimants' solicitor with a row of kisses.

The Respondent's representative also took it upon himself to encourage other members of MAG to contact the Claimants' solicitor directly, asking via email on 23 September 2013 for her details to be circulated to all local reps and Yorkshire MAG members. On 29 October 2013 the Claimants' solicitor then received an email from one of the regional MAG reps which concluded with the line *'So I can say with impunity, then, "Fuck you, you stupid fucking bitch!" You have met your match!'* It is fair to say that the Respondent's representative immediately apologised for this, but when this firm's Managing Partner wrote to him to formally complain about her treatment and note that her details had previously been circulated to MAG as above, the Respondent's representative indignantly replied that there was no link between the two things, ending his email with *'Miss Sharp sought to frighten us. You seek to frighten us and smear us to boot. You have both failed. Some case.'*

The Claimants contend that the references to the correspondence above are indicative of the Respondent's approach throughout and evidence of completely unreasonable behaviour by the Respondent in conducting these proceedings. The Claimants therefore apply to the Tribunal for a costs order on those grounds and ask that it now considers making the same. We attach a schedule of costs incurred in dealing with these proceedings, and copies of all the correspondence referred to above can be provided to the Tribunal should it wish to see them.

We look forward to hearing from you in due course.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'Ellis Hass & Co.' with a stylized flourish at the end.

Ellis Hass & Co

Direct Telephone: 745 0637

Email: paul@ehsolicitors.co.uk

Mr JP Tyson, Mr NC Brown & Ms L Smith v MAG (UK) Ltd
Schedule of costs incurred 11/06/2013 to 12/05/2014

Fee Earners:

Toni Sharp – Associate Solicitor - £160 per hour
Paul Bownes – Associate Solicitor - £160 per hour

Attendances on Clients and Counsel

Personal attendances – 3 hours at £160 per hour	£480.00
Telephone attendances – 14 hours at £160 per hour	£2,240.00
Letters and emails – 101 units at £16 per unit	£1,616.00

Attendances on Other Side

Telephone attendances – 6 minutes at £160 per hour	£16.00
Letters and emails – 79 units at £16 per unit	£1,264.00

Attendances on Tribunal and Third Parties

Telephone attendances – 12 minutes at £160 per hour	£32.00
Letters and emails – 28 units at £16 per unit	£448.00

Work on Documents

Preparation and drafting – 43 hours at £160 per hour	£6,880.00
Perusal and consideration – 15 hours 6 minutes at £160 per hour	£2,416.00

Tribunal Hearings

Travel to Tribunal – 2 hours at £160 per hour	£320.00
Attendance at hearings – 20 hours 6 minutes at £160 per hour	<u>£3,216.00</u>

Sub-total of professional costs	£18,928.00
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VAT at 20%	<u>£3,785.60</u>
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Disbursements

Counsel's fee for hearing 01/11/2013 – Tina Ranales-Cotos (1999)	£3,330.00
Counsel's fee for hearing 28/01/2014 – Tina Ranales-Cotos (1999)	£1,020.00
Counsel's fee for full hearing 24-28/02/2014 – Tina Ranales-Cotos (1999)	£9,000.00
Counsel's fee for remedy hearing 07/05/2014 – Tina Ranales-Cotos (1999)	<u>£1,500.00</u>

TOTAL	£37,563.60
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The costs stated above do not exceed the amount that the Claimants are liable to pay in respect of the work which this statement covers. Counsel's fees have been incurred in the amounts stated above and will be paid to the person stated.

Larkley

PARTNER

ELVIS HARRIS & CO SOLICITORS

6.6.14