EMPLOYMENT TRIBUNALS

Claimant: Miss Amanda Steele

Respondents: (1) Uniquely Chic Furniture (Cheshire) Limited
(2) Michael Bennett

HELD AT: Manchester **ON:** 8 February 2019

BEFORE: Employment Judge Holmes
Mrs P J Byrne
Ms S Khan

REPRESENTATION:

Claimant: Mrs Ham, CAB
Respondents: Miss Riley, Manager

RESERVED JUDGMENT ON RECONSIDERATION

It is the unanimous judgment of the tribunal that:

1. The Tribunal reconsiders its judgment on remedy sent to the parties on 5 January 2018.

2. Having reconsidered that judgment, the Tribunal does not revoke or vary it, or any part of it, and it is confirmed.

REASONS

1. For the purposes of this reconsideration hearing, as neither party was professionally represented, the Employment Judge prepared, by extracting copy documents from the Tribunal file, a Bundle, for use in the reconsideration hearing. The parties were invited to consider that Bundle, and, if either of them considered that there were any further documents which should be included, to say so. They were content with the Bundle that had been produced. Accordingly, any references to page numbers in this judgment are, unless the contrary is stated, to page numbers in that Bundle.

2. Following the Tribunal's reserved judgment on liability sent to the parties on 8 December 2017, the Tribunal convened a remedy hearing for 4 January 2018. The parties were invited to make further submissions, and adduce any further evidence, for a further hearing, if so required, to be held.

3. By email sent to the Tribunal, and the respondents, on 21 December 2017, the claimant made a further statement about the effects of the discrimination upon her, and her medical condition, and enclosed further medical evidence, in the form of a letter from her GP dated 14 December 2017, and an updated Schedule of Loss, in which aggravated damages were claimed. The claimant indicated too that she was content to proceed on the basis of this further written information, and did not attend the resumed hearing.

4. No further response or representations were thought to have been received from the respondents, and they did not attend, nor were they represented at the remedy hearing. The Tribunal accordingly proceeded to determine remedy, and its reserved judgment on remedy was sent to the parties on 5 January 2018.

The reconsideration application.

5. By email of 5 January 2018, Miss Scully, wife of the second respondent and representative of both respondents, sent an email (page 32 of the Bundle) to the Tribunal, after she had clearly received the judgment on remedy, as she refers to it. It this email she points out that at para. 3 of the judgment, it is recorded that the respondents had not responded to the reserved judgment (i.e that on liability) whereas the respondents had done so by an email sent on 29 December 2017. That was a seven page document, unfortunately not paginated nor given paragraph numbers, headed "RESPONSE TO RESERVED JUDGMENT". The "reserved judgment" referred to was the liability judgment, sent to the parties on 8 December 2017. Miss Scully attached this document (pages 33 to 39 of the Bundle) to her email of 5 January 2018.

6. Later that day, Miss Scully sent a further email to the Tribunal (page 40 of the Bundle) giving more details of when, and how she had sent the "response" document to the Tribunal and the claimant on 29 December 2017.

7. On 9 January 2018 Miss Scully sent the Tribunal a further email (page 91 of the Bundle) to which she attached a screenshot (page 91A of the Bundle) confirming transmission of some photographs and a document to the Tribunal and the claimant on 29 December 2017.

8. The Tribunal wrote to the parties on 10 January 2017 (pages 44 & 45 of the Bundle), seeking further clarification from the respondents, and also enquiring of the claimant whether she had received the "response document" in an email from the respondents.

9. Miss Scully replied by email of 10 January 2018 (page 46 of the Bundle), and the claimant by email of 12 January 2018 (page 47 of the Bundle). The claimant confirmed she had indeed received the respondents' email of 29 December 2017, and seven photographs. She had tried unsuccessfully to forward these to the Tribunal.

10. On 15 January 2018 the Tribunal received from Miss Scully a letter enclosing hard copies of the seven photographs which had been attached to the "response" document sent to the Tribunal on 29 December 2017 (pages 48 to 56 of the Bundle).

11. By letter of 31 January 2018 (page 57 of the Bundle) the Tribunal wrote to the parties indicating that the respondents' communications had been accepted as a request for a reconsideration of the judgment. That letter is inaccurately phrased, as, as was clarified, the Tribunal regarded, and has accepted the application only in so far as it relates to the remedy judgment. As, however, the Tribunal made findings in the liability judgment which went to remedy, there is inevitably some overlap between the two.

12. By email of 5 February 2018 the claimant responded to the application. She attached her representations in response to the "response" document and the photographs (pages 58 to 60 of the Bundle). In essence, she objected to the admission of any new evidence, citing caselaw (doubtless with the assistance of the CAB, who had been assisting her in the latter stages of her case), and standing by the evidence she had given, with nothing more to add. She maintained her claim for aggravated damages, and explained why no claim had previous been made by her or her representative. She maintained that she had suffered injury to her feelings, had found the respondents' closing statement unbelievably offensive, and it had shocked her.

13. There then ensued correspondence between the respondents and the Tribunal as to the need for them to attend an oral reconsideration hearing. The Employment Judge not having rejected the application for a reconsideration under rule 72(1) of the rule, Notice of a Reconsideration Hearing was sent to the parties, for a hearing on 17 July 2018. Further correspondence ensued, and by letter of 5 July 2018 (pages 65 to 67 of the Bundle) the Tribunal explained at some length the process of the reconsideration hearing, and what parties should do to prepare for it. It was made clear in that letter that the Tribunal would only reconsider the remedy judgment.

14. By a document sent to the Tribunal by email to 10 July 2018, entitled "RECONSIDERATION WITH REFERENCE TO RESERVED JUDGMENT ON REMEDY 17/7/18" the respondents sent further written submissions (pages 69 to 84 of the Bundle) .

15. Unfortunately due to serious family illness befalling one of the Panel, the hearing listed for 17 July 2018 had to be postponed. The respondents wished to be represented at the hearing by Miss Riley, and informed the Tribunal that she would not be available for the ensuing 6 to 8 weeks, due to her having an operation. Following further emails from the respondents on 6 and 18 July 2018, the Tribunal replied on 31 July 2018 (pages 88 to 90 of the Bundle). The procedure at the reconsideration hearing was again explained, and all points raised by the respondents were, in the view of the Tribunal, dealt with.

16. On 22 October 2018 (following further non – availability of another member of the Tribunal panel for medical reasons) the Tribunal sent the parties a Notice of Reconsideration Hearing , which listed the hearing for 8 February 2018 (page 91 of the Bundle).

17. On 14 December 2018 Miss Scully sent the Tribunal a further email, referring back to its letter of 5 July 2018, querying point (h) , which referred to the respondents appearing to seek a reconsideration of the liability judgment, which it was pointed out would require a clear and separate application. The Tribunal replied on 4 January 2019 (page 95 of the Bundle), noting that it had been made clear previously that the Tribunal was treating the application as one for reconsideration of the remedy judgment only.

The hearing.

18. The claimant attended the hearing, represented again by Mrs Ham, CAB worker, and the respondents were represented on this occasion by Miss Riley, with the second respondent also attending in person. Miss Riley did not pursue any application to reconsider the liability judgment.

19. At the outset, the Employment Judge explained the procedure, and introduced the Bundle. He explained how the claimant could give evidence, and be cross examined upon that evidence, in so far as it related to remedy. The claimant had not sought to make any further witness statement, and was content to rely upon her previous statements to the Tribunal.

20. The claimant was asked at the outset whether she disputed that the respondents had sent to the Tribunal and to herself the document entitled "Response to Reserved Judgment", with seven attached photographs on 29 December 2017. She did not.

21. On that basis the Tribunal was satisfied that it was in the interests of justice, under rule 70, to reconsider the Remedy Judgment, on the grounds that the respondents had clearly sought to put written representations and evidence before the Tribunal for the determination of remedy, which had not been before the Tribunal on 4 January 2018, which led to its judgment being made in ignorance of the respondents' representations, and further evidence.

22. Accordingly, the Tribunal decided to reconsider its judgment, by hearing the evidence on remedy, upon which the claimant agreed to be cross -examined, receiving the respondents' evidence that they tried to submit for that hearing, and their submissions as to the remedy that the Tribunal should award.

23. The claimant gave evidence in chief, by confirming her previous witness statement to the Tribunal, and confirming the contents of her email to the Tribunal of 21 December 2017, and the attachements to it, which were a letter from her GP, dated 14 December 2017, and her schedule of loss (pages 19 to 22 of the Bundle).

24. She was cross – examined by Miss Riley, and questioned by the Tribunal.

25. The areas of her evidence, and the Tribunal's remedy judgment, upon which the claimant was cross -examined, and her answers, which the Tribunal accepted and finds as facts, were, broadly these:

26. Cross – examination put: Although she claimed personal injury, she had only had four consultations with her GP over the course of a year, and did not initially attend after the alleged incident. Attendances seemed to coincide with Tribunal hearings. She had only one consultation with Talking Therapies, and had not taken up any course of treatment with that provider. She had been able to start, and hold down, another customer – facing job immediately after the alleged incident, so could not have been very ill. Her text message to Tommy Slaven was put to her (page 69 of the original hearing bundle) in which she suggested that she would be getting a new job in the new year.

27. The claimant's responses: The claimant agreed that there may only have been few such consultations with her GP, and these were often in the lead up to Tribunal hearings, when her low mood and anxiety worsened. Not every visit to her GP was in the documents, she was sure she will have attended more often. She had been prescribed Propanodol , and indeed had then been prescribed Sertraline. She had not needed Talking Therapies treatment at the time she spoke with them, as she felt the drug treatment was working. She has an appointment booked with them in March this year. She had indeed had two jobs since she left the respondents. She had to work, to support her son. She suffered panic attacks, or the potential onset of panic attacks in both. She could control these however, by her medication which she would take when she felt an attack coming on. She produced a further letter from her GP (dated 3 January 2018, but clearly erroneously for 3 January 2019, page 20A of the Bundle)), in which he or she set out the continued treatment she was receiving, including the prescription of Sertraline in July 2018 , the dosage of which was increased later in 2018, and appeared to be successful.

28. She had decided she was not going back to work for the respondents after the incident. She changed job since the initial job that she had obtained at the deli. She believed she had started the job in the deli on 16 January 2018. Her notes in the hearing bundle were originally hand written and not in any particular order. She later had checked her phone and confirmed that she had been offered the job at the deli on 16 January 2018. She had resigned on 13 January 2018 whilst off work on the sick. This was because Miss Scully was trying to contact her, and she wanted to avoid her.

29. She now worked in a kitchen, where she has found she can cope, but can still get panic attacks, which she would prevent by taking her medication.

30. Cross – examination put: Whilst much was made of the loss of the friendship of Miss Scully, this was only a work based relationship, and Miss Scully was only really making sure that her employee was fit for work, helping her with her son's problems because her own family had, as the claimant had told Miss Scully herself, not been prepared to help out with lifts when they could have done so, and were generally not supportive of her.

31. The claimant's responses: It was true that she and Miss Scully did not socialise outside work, but she regarded her as a friend, and someone she could confide in. She did not regard her friendship as just a means of ensuring that she could keep coming into work, and believed that they were close. She would not ask her mother to drive her and her son into town. Miss Scully offered to help her, could drive and had a car.

32. Cross – examination put: why had the claimant not applied for aggravated damages before? Had not everything that the claimant complained about been what she had herself told Miss Scully and others working for the respondents? Were they not merely repeating the truth that she had told them?

33. The claimant's response was that she did not understand these things, and did not know that she could. She was guided by someone from the CAB. She was then told she could apply for them because of the ongoing name calling, criticism of her character and family, and all the negative things that had been said about her. She denied telling Miss Scully or anyone else all these things about her family, and her previous life. She had never "begged" for Co – codamol, and her GP had never refused to prescribe her them. Miss Scully had offered her some when she needed some. The facts were being twisted against her.

34. In answer to a Tribunal question, she confirmed that she was unaware that there was any grievance procedure, and was never shown or provided with one.

35. In re-examination, she clarified her job offer at the deli, and explained how if she had stayed on the sick, she would only have got SSP, less than her normal salary. This would also have affected other benefits such as working tax credits. Her panic attacks could come at any time, she had avoided crowded places such as Manchester, and a school fair could bring one on. An email or a phone call from the Tribunal could bring one on, such as once when she was in Sainsburys shopping. Her son had said how he would not see Sue again. He had got a card from her, "with love" from her, Mr Bennett, and indeed their dog, and he thought that she and Mr Bennett loved him.

The respondents' submissions.

36. There are two key documents which formed the basis of the respondents' case. The first is the "Response to reserved judgment" document at pages 33 to 39 of the Bundle, which should, and would, have been before the Tribunal for the remedy hearing, but for administrative error. The second is the "Reconsideration with Reference to Reserved Judgment on Remedy" document at pages 69 to 84 of the Bundle. Additionally, there were Miss Riley's oral submissions, which did not seek to introduce any new matters, quite properly, but to highlight what the Tribunal considers to be the main points of the respondents' case on remedy.

37. Dealing with those two documents, first, the Tribunal makes these observations. In the first, many paragraphs relate to the Tribunal's findings on liability, and it is not open to the respondents to re-argue them in a remedy or a reconsideration hearing. The respondents have unfortunately not used paragraph numbers in this document, but the Tribunal's estimation is that only some 14 or so paragraphs can be said truly to relate to matters of remedy, all the others relate to liability. There is some issue taken with the timescale for the respondents to make their submissions on remedy, but, as it turned out, the respondents were able to submit this substantial document within the directed timeframe. Further, they have also now made further submissions in the July submissions.

38. Turning to that second document, whilst some parts of that are also more properly directed to liability findings, it is, as one would expect, far more focussed on the Tribunal's findings on remedy, and the awards it has made.

39. From those documents, and Miss Riley's submissions, the Tribunal understands the respondents' case on remedy to fall under the following broad headings.

a) The Tribunal should not have made an Injury to Feelings award in the middle band of Vento, this was a lower band case;

b) The Tribunal should not have made an award for personal injury, or, it should have made a lower award;

c) The Tribunal should not have made an award of aggravated damages, because,

   i) This was not pleaded by the claimant originally, her representative declined to seek such an award, and these were only sought once the Tribunal had made the suggestion in the liability judgment;

   ii) The matters relied upon in aggravation were only matters that the claimant had herself told the respondents, and they should not be penalised to telling the truth as she told them;

d) Interest should not run until the claimant had pleaded her allegations fully, which she did not do until 1 June 2017, and the delays in the claim being finalised are not the fault of the respondents;

e) The award should be reduced by 25% because the claimant did not follow the ACAS Code of Practice, as she did not raise a grievance.

Miss Riley addressed these topics in her oral submissions, amplified these points, and highlighted the claimant's evidence to the Tribunal on this, and previous occasions.

40. Mrs Ham for the claimant, in her submissions, briefly pointed out that the respondents had the opportunity to cross – examine the claimant's sister in the previous hearing, but did not do so. The claimant had testified as to the panic attacks, and the effect upon her, and as to effect upon her family life with her son, and had been under great stress.The discrimination still impacted upon her, the effects of the treatment she suffered had lasted two years. The ***Vento*** band was correct, and the award for aggravated damages should be maintained. Subsequent conduct can be taken into account, and the respondents' submission of 29 December 2017, and the absence of an apology, justified such an award.

Discussion and Findlings.

i)Injury to Feelings.

41. As indicated in our previous judgment, we considered that the appropriate award in this case lies in the middle band of the ***Vento*** guidelines. This was because, whilst this could be considered as a "one off" act of sexual harassment, it was sustained, and its effects have been serious and long lasting. The respondents have taken issue with the Tribunal's use of the term "for two hours" and have referred to the length of the telephone calls, of which the first one on the night in question was not a sexually harassing call. The Tribunal takes the respondents' point, but it is not one which has any great weight. The Tribunal's award was not based on any precise calculation of the duration of the harassment, but upon its overall assessment of the seriousness of the harassment, and the fact that it was sustained. That was to draw a contradistinction with true, "one off" cases, where one remark, or a very brief piece of conduct, is the basis of the claim. That was not so here. Whether over the course of an hour, or nearer two, this was sustained verbal sexual harassment.

42. Much was made of the nature of Miss Scully's friendship with the claimant, which the respondents have sought to downplay, suggesting that she only helped the claimant out because the claimant had told her how unhelpful her family had been, and Miss Scully had been doing little more than ensuring, as an employer, that her employee was able to keep coming into work. The claimant did not accept this, and neither does the Tribunal. Whilst they did not socialise, the claimant regarded Miss Scully as someone she could, and did, confide in, and who had helped her son out of what she took as genuine feelings of affection. It is of note that this perception was clearly one the claimant shared with friends, as Tommy Slaven (page 69 of the original hearing bundle) in a text message commenting on the claimant telling him she was leaving, said "Sues bin a great friend to you as well". He also commented on how he knew the claimant liked her job. Those two additional factors, loss of a friendship, and loss of a job she enjoyed, were further factors in our decision that this was case outside the lower band of ***Vento***. We see no basis to change our assessment of the injury to feelings award.

43. A point was also made that the claimant "did not need to resign", she could have stayed on sick leave. The Tribunal is not entirely clear what the respondents mean by this. There is no financial loss claimed or awarded, so it cannot go to that issue. As to whether the claimant resigned in response to the harassment she suffered, the Tribunal was, and remains, quite satisfied that she did. Precisely when she did seems to us to be irrelevant. She explained how she was being (and there is nothing amiss in this) chased by Miss Scully to see when she was coming back to work, and she was avoiding contact with her. We accepted her evidence that she actually resigned sooner than she wanted to, as she had hoped for help with her resignation letter from the CAB. We see nothing in this point to warrant any change to our awards.

ii)Personal Injury.

44. The respondents' challenge to this head of award is, as we understand it, twofold. Firstly, they question whether the claimant did actually sustain any form of psychological injury at all, as a result of this harassment, and secondly, even if she did, they challenge that it merits an award of the order that we have made.

45. In relation to the first issue, they point to the fact the claimant only has produced evidence of four visits to her GP over the period since the incident. They also point out that these coincided with Tribunal hearings, and imply that the claimant was, in effect, seeking to bolster her claims by these consultations.

46. We do not so find. The act that consultations took place in the run up to Tribunal hearings is entirely understandable , as the claimant's anxiety would be heighted at those times, by virtue of having to attend such a hearing, and also of having to re- live the incident. Further, the claimant has produced corroborative evidence from her GP of the prescription of two types of medication, and at one stage, an increase in dosage. Such prescriptions are, in the experience of the Tribunal , not provided lightly, and the fact that the claimant was put onto Sertraline, an anti-depressant , is further evidence that her GP's view was that there was a condition which required treatment.

47. Our personal injury award was based upon the claimant's condition having lasted for a year, at the time of the remedy hearing, but with no clear prognosis. The Tribunal expected (see para. 19 of its Judgment on Remedy) some improvement or even recovery before too long. The claimant's evidence before the Tribunal, however, if anything, suggests that this was a slightly optimistic view, given that in July 2018 the claimant was prescribed Sertraline, and the dosage was increased a few months ago. The fact that the claimant was seeking further medical help around July 2018 is doubtless because the hearing of the respondents' reconsideration application was due to be held then.

48. The claimant's medical condition, therefore, has lasted longer, and has continued to cause her symptoms necessitating further drug treatment , for a longer period than the Tribunal envisaged. If anything , it may have under – compensated her. What is clear, however, is that in the light of the claimant's evidence, and supporting medical evidence, there is ample basis for an award of the size that the Tribunal made, and it could certainly not be considered excessive if it had been made today. There has been no cross – application to increase it, however, and the Tribunal will not disturb it.

iii)Aggravated Damages.

49. The tribunal turns to aggravated damages. The respondents now have had the opportunity to comment upon this element, which the claimant did indeed seek, albeit after the Tribunal's Judgement on Liability. Dealing with this point first, whilst taking the respondents' point that the claimant and her CAB representative did initially decline to seek such an award , but then changed their minds, the Tribunal sees no difficulty with this. The claimant is not a lawyer, and the CAB representative was inexperienced. Even if she had not been, or was a fully qualified lawyer, why should such a mistake disentitle the claimant to an award of this nature if the Tribunal considers that the facts merit it ? The Tribunal has long been a jurisdiction in which "pleading" points are not taken, and, provided that justice can be done between the parties, a party will not be disadvantaged because he or she has made a mistake in not claiming something to which they may be entitled, provided the other side is not prejudiced by such a claim.

50. It is, of course, only fair that the respondents be given the chance to comment upon such a claim, and it was the Tribunal's express intention, in setting out the basis for such awards in its liability judgment, that the respondents have an opportunity to comment upon it. They did so, but without the Tribunal being aware of their comments, a situation which has now been remedied by this reconsideration.

51. The Tribunal therefore turns to consider the basis upon which, on the merits, the award of aggravated damages is resisted. In essence, in both the written submissions and Ms Riley's oral submissions and cross – examination of the claimant, the respondents' position is that they were only repeating matters that the claimant had herself told them. She it was, they maintain, who told them about her uncaring and unhelpful family, her former drug use and her heavy drinking. All they were doing was telling the truth as she had told them.

52. The claimant does not accept that, but to some extent it does not matter whether she had or had not told the respondents of these matters. If she did, she doubtless did in confidence, and not in the expectation that they would be thrown back in her face when she had the temerity to allege, correctly as we have found, that the second respondent had sexually harassed her.

53. At one point the respondents were seeing to blame their erstwhile solicitor for the conduct of the defence to the claims. She, it is claimed was an experienced employment lawyer. If she is, she will doubtless have been aware of the dangers of aggressively defending such claims . It is to be remembered that the Tribunal's award of aggravated damages is not based solely upon the imputations on the claimant's character but also the application, doomed to failure in such a fact sensitive case, to strike out her claim made by the respondents.

54. Further, the Tribunal notes that the respondents remain unrepentant, not merely continuing to refuse to apologise but also by continuing their slurs upon the claimant, a point taken by Mrs Ham and the claimant about their "Response" document . It is sad that despite being warned in the liability judgment of the basis upon which the Tribunal was considering making an award of aggravated damages, the respondents in their "Response to Reserved Judgment" document of 29 December 2017 , on the last page (page 39 of the Bundle) had to say:

"If the panel have been taken in by the Claimant as some poor single parent who can't stand up for herself then we believe that based on her appearance and demeanour you would not possibly believe she was a regular drinker or ex – cocaine user. Fact is, this is all true."

Further on they say:

"Whilst we appreciate that some of our comments may offend, quite frankly we feel that we have nothing to lose. They are the truth."

They attached some photographs which depict the claimant posing for a photograph in which she is drinking wine from an intravenous drip, and is otherwise appearing to smile, and socialising. These do not, in the Tribunal's view undermine the claimant's credibility, which the Tribunal accepted in the liability hearing, and which , having seen her give evidence again, remains the case. These , the Tribunal considers,

prove nothing, they are snapshots, literally, of moments when the claimant may well have been happy, or joking around about wine. They do not undermine her evidence, nor do they begin to undermine the medical evidence that for the last two years the claimant has been on two medications, one an anti – depressant.

55. The respondents may have thought that they had nothing to lose by repeating their aspersions on the claimant's character. In fact they did, they had the chance of the award of aggravated damages being reviewed or being reduced. Their continued attacks upon the claimant's character only serve to underline how appropriate such an award was, and remains. That the manner in which the defence of proceedings has been conducted may merit an award of aggravated damages is illustrated in ***Zaiwalla & Co v Walia [2002] IRLR 697***. Whilst this case is not as extreme, it certainly warrants such an award.

Interest.

56. The respondents also contest the award of interest. Their point in essence, is twofold. Firstly, they contend that the Tribunal should not have awarded any interest for the period prior to 1 June 2017, which was when the claimant provided her further and better particulars of what the second respondent said. Secondly, they contend that the proceedings were "dragged out" in general terms, and by the need for a further hearing on 17 November 2017, when the second respondent was only questioned for 40 minutes.

57. In relation to the first point, the principle contained in the Regulations, which were set out in para. 23 of the Judgment on Remedy , is that interest is awarded in respect of injury to feelings from the date of the discrimination complained of. That was, of course 22 December 2016. The claimant does not start suffer the injury to feelings only when she provides the further particulars on 1 June 2017, she suffered such injury to feelings from 22 December 2016. When she particularises her claim has no bearing on that that. Reg 6(3) does provide, however:

(3) Where the tribunal considers that in the circumstances, whether relating to the case as a whole or to a particular sum in an award, serious injustice would be caused if interest were to be awarded in respect of the period or periods in paragraphs (1) or (2), it may—

(a) calculate interest, or as the case may be interest on the particular sum, for such different period, or

(b) calculate interest for such different periods in respect of various sums in the award,

as it considers appropriate in the circumstances, having regard to the provisions of these Regulations."

58. That entitles the Tribunal to consider reducing the amount of interest only if "serious injustice would be caused" to apply the Regulations as they are normally applied. The Tribunal does not agree that any such serious injustice arises in this case. The whole claim, from the act of discrimination to the Tribunal's Judgment on remedy took 13 months. There was one preliminary hearing, a three day liability

hearing, which dealt with some of the issues on remedy, and a remedy hearing. That is a relatively short timescale compared with most other discrimination claims which the Tribunal hears. The respondents chose to contest the claims, and hence a hearing was necessary. They also sought to contest remedy, hence the need for another hearing. Whilst they complained of the short timescale for such a hearing (with which they actually managed to comply) , it meant that the proceedings were concluded with a reasonable timescale. In these circumstances, the Tribunal cannot agree that serious injustice would be caused by applying the Regulations, and the Tribunal makes no change to its award of interest.

Other matters.

59. The respondents seek (point 20, page 83 of the Bundle) some form of set off against the additional award of two weeks pay for failure to provide a written statement of particulars of employment, because the claimant was "overpaid" sick pay for the first week she was off sick. This is not permissible. Firstly, s.38 of the Employment Act 2002 requires a Tribunal to make such an award, which can only be of either two or four weeks pay. Section 38(5) entitles a Tribunal to make no award , not to reduce any award by any further amount, if there are "exceptional circumstances which would make an award or increase under [the relevant subsection] unjust or inequitable". The Tribunal does not consider that the fact that the first respondent paid the full contractual rate of sick pay, rather than SSP, amounts to such an exceptional circumstance, and this award stands.

60. Further, at point 21 of the submission (page 83 of the Bundle) the respondents also seek a 25% reduction in the award, for failure on the part of the claimant to follow a grievance procedure. This is prompted, doubtless, by para. 21 of the Judgment on Remedy, in which the Tribunal declined to make any uplift of that nature, pursuant to the same provisions, namely s.207A of the 1992 Act.

61. This, of course, is the respondents seeking to take a point and make an argument that they had not previously raised, rather like the claimant's aggravated damages claim. The Tribunal does not preclude them from doing so, but the short answer to this point is that there was no grievance procedure that the claimant was aware of or could have used. There was no response to the claimant's resignation letter inviting her to raise a grievance , even at that stage. There are no grounds for a reduction in the awards of 25% or any other percentage

62. Finally, and for completeness, whilst the point has been made previously, the means of the respondents to pay any award are wholly irrelevant. A claimant is entitled to the same level of award for the injury to feelings sustained at the hands of a small employer as at the hands of a large one.

63. Thus whilst the Tribunal has reconsidered its judgment on remedy , it sees no grounds to vary any of the awards made, and the judgment stands. The Tribunal is grateful to Ms Riley for the measured, courteous and reasonable manner in which she conducted the reconsideration hearing on behalf of the respondents, and her lack of success is no reflection upon her.

Employment Judge Holmes

Dated: 19 February 2018

RESERVED JUDGMENT SENT TO THE PARTIES ON

21 February 2019

FOR THE TRIBUNAL OFFICE