EMPLOYMENT TRIBUNALS

Claimant: Mr R Levy

Respondent: McHale Legal Limited

Heard at: Manchester **On:** 10 and 11 October 2019
7 November 2019
(in Chambers)

Before: Employment Judge Langridge
Mr Q Colborn
Ms B Hillon

REPRESENTATION:

Claimant: In person
Respondent: Ms L Quigley, counsel

JUDGMENT ON REMEDY

The unanimous reserved judgment of the Tribunal is that:

1. The respondent shall pay the claimant compensation for loss of earnings in the sum of £1,736.92.

2. The respondent shall pay the claimant compensation for injury to feelings amounting to £4,000.

3. The respondent shall pay the claimant compensation by way of aggravated damages amounting to £6,000.

4. The claimant is entitled to receive interest totalling £1,450.91.

REASONS

Introduction

1. The Tribunal having upheld the claimant's claim by a judgment given orally on 22 May 2019, arrangements were made for a remedy hearing to take place on 17-18 July 2019. At the request of the respondent this was postponed and the remedy hearing took place on 10 & 11 October 2019. The claimant again represented himself, and the respondent was represented by Ms Quigley, who had not appeared at the liability hearing.

2. The start of the hearing was delayed considerably by issues relating to the claimant's documents, which were voluminous and related to his efforts to mitigate his losses. The need to copy a missing folder of documents led to a long delay on the first day, most of which time the Tribunal was able to utilise for pre-reading. Evidence was then heard from the claimant and from Mr McHale on behalf of the respondent. Both parties produced new witness statements for the remedy hearing, but the respondent produced no new documents.

3. The agenda for the remedy hearing had been set by the Tribunal in the presence of the parties at the conclusion of the liability hearing. The agreed list of issues comprised the following:

    3.1 Whether, but for the discrimination, the claimant would have been appointed to the position of commercial property solicitor.

    3.2 The terms on which any such appointment would have been offered, including terms as to:

        3.2.1 Whether the appointment would have been as an employee, a self-employed contractor or a consultant;

        3.2.2 When the appointment would have begun;

        3.2.3 The remuneration that would have applied;

        3.2.4 The amount of notice that the parties would have been required to give each other to terminate the appointment;

        3.2.5 The likely duration of the appointment, and whether it would have been carried out on an interim basis.

    3.3 What, if any, loss of earnings the claimant suffered in consequence of the discrimination, and whether or not losses continued on an ongoing basis after his next employment began.

    3.4 Whether the claimant took all reasonable steps to mitigate his loss of earnings.

    3.5 What injury to his feelings the claimant says he experienced as a result of the discrimination (which is to be supported by evidence from the

claimant), and the value of the award for injured feelings he seeks, in particular why the claimant alleges that the middle band of Vento is appropriate.

3.6 What, if any, award of compensation for aggravated damages should be made, which question shall include consideration of the respondent's conduct of the proceedings.

4. The claimant's position on the remedy issues was put forward in broad terms and his new witness statements did not deal expressly with the detail of the list of issues. He felt he would have been appointed to the role of commercial property solicitor, but to his credit the claimant was realistic about its long term prospects and overall he was content to leave matters in the discretion of the Tribunal. He produced a schedule of loss setting out detailed notes on his approach to compensation, but this lacked concise calculations of monetary losses. As for injury to feelings, the claimant indicated that he was content for the Tribunal to determine the figure, either in the middle band of the Vento guidelines (as originally claimed), or at the higher end of the lower band.

5. The respondent's approach to remedy was to press its point that the claimant would never have been hired, even absent the discrimination, but in recognition of the Tribunal's judgment the respondent gave evidence relating to the matters identified in the list of issues.

Issues and relevant law

6. The issues of fact were as set out in paragraph 3 above. The core questions of whether the claimant would have been engaged by the respondent, and for how long, had to be assessed as best the Tribunal could ascertain by reference to his loss of the chance of the new job. This necessarily involved a degree of speculation but the Tribunal did its best to evaluate these chances, and the losses that flowed from them, with the benefit of the evidence produced to us by the parties.

7. The first remedy sought by the claimant today was compensation for loss of earnings under section 124(2)(a) Equality Act 2010 ('the Act'). This required us to take into account any unreasonable failure to mitigate losses, should there be evidence that that was the case. The claimant also sought an award for injury to feelings pursuant to Vento v Chief constable of West Yorkshire (no.2) 2003 ICR 318, CA, as updated. At the liability hearing the claimant had indicated that he felt the injury fell within the middle band of Vento, although by the time of summing up at the remedy hearing he modified his approach and indicated that he would be content with an award at the top of the lower band. At the time this claim was presented to the Tribunal, after 1 April 2018, the lower band was £900 to £8,600 and the middle band was £8,600 to £25,700. The Tribunal reminded itself that such awards are intended to be compensatory in nature, not punitive.

8. The claimant also sought an aggravated damages award. Following the guidelines in Alexander v Home Office 1988 ICR 695, CA the Tribunal considered whether it was appropriate to make such an award. It may be appropriate where a respondent behaves in a high-handed, malicious,

insulting or oppressive manner. The Tribunal directed itself to the guidelines set out in Commissioner of Police of the Metropolis v Shaw EAT 0125/11, where the Appeal Tribunal identified three broad categories where an aggravated damages award might be made:

(1) Where the wrong was done in a particularly upsetting manner;

(2) Where there was a discriminatory motive, for example based on prejudice or intention;

(3) Where subsequent conduct has added to the injury, for example the respondent's conduct in the Tribunal proceedings is offensive, or the claim is not taken seriously.

9. An aggravated damages award has to focus on the impact on the claimant of any aggravating features. In considering this question, the Tribunal ensured that it avoided duplication with the injury to feelings award so that any award for aggravated damages properly reflected aggravating features over and above the initial injury arising from the act of discrimination itself.

10. Interest was payable on pecuniary and non-pecuniary awards under the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 ('the 1996 Regulations'). Regulation 6(1)(a) deals with interest on awards for injury to feelings, counting from the date of the act of discrimination until the calculation date (the date when the Tribunal made its calculations). Interest on other losses is calculated under Regulation 6(1)(b) from the mid-point date between the act of discrimination until the calculation date. The applicable rate of interest is 8% per annum.

The factual issues

Whether, but for the discrimination, the claimant would have been appointed to the position of commercial property solicitor

11. In its written reasons for the liability judgment the Tribunal found that Ms Udalova-Surkova told the claimant that the need for a new commercial property solicitor was "fairly urgent", and identified the likely start date as Monday 12 March 2018, within days of the interview. She told the claimant that work was "piling up" and new instructions were coming in. We also found that notwithstanding the claimant's remark about poisoning, just before the interview, she felt he had suitable skills and experience. We were satisfied that Ms Udalova-Surkova wished to go ahead with the appointment because she felt the need for immediate and experienced support with pressing commercial property work.

12. We found that no new solicitor was in fact appointed by the respondent, which was able to cover the work internally by allocating some to a residential property solicitor and otherwise obtaining assistance from junior and unqualified staff. While we accepted as a fact that this is what happened, we also concluded that these arrangements could equally be explained as the respondent taking steps to manage the consequences of its decision not to appoint the claimant.

13. The evidence at the liability hearing strongly suggested that the claimant would have been appointed because the commercial need was there, and it was urgent. Furthermore, the respondent had an intention (even if not acted upon) to advertise the vacancy again for a more junior solicitor.

14. The question for the remedy hearing was whether the decision-making process would have got in the way of an intention to appoint the claimant, especially once Mr McHale became involved. In his witness statement for the liability hearing, Mr McHale made no reference at all to the claimant's qualities or his CV, in explaining why the claimant was not offered the position.

15. Mr McHale gave evidence on this point in his witness statement for the remedy hearing. At the relevant time he was the 100% shareholder in the firm and "all major decisions concerning the employment of staff at a certain level" were made by him. No one earning more than £40,000 would be employed unless it was expressly agreed by him.

16. Mr McHale described the process that would have been followed if the claimant's application had gone further. He would have considered the claimant's CV, and this would have given him grave cause for concern because of the claimant's apparent inability to stay in a job. He had worked at 30 firms since qualification. This alone led Mr McHale to say it was highly unlikely that he would have offered the claimant a position.

17. The claimant's evidence was that his work has been subject to several recessions which have particularly affected property law, and has meant over a long period working as a locum or on a series of temporary engagements. He had a number of short term assignments lasting 3 months, and some of the large London firms who hired him had opened dialogue with a view to taking him on.

18. We found that the claimant's CV was not circulated before or at the 8 March board meeting, nor was it mentioned in Mr McHale's his witness statement for the liability hearing as a reason for not appointing the claimant. We accept that it is relevant for the purposes of this remedy hearing, but having evaluated the evidence we were not persuaded that the CV would have been an obstacle to the claimant's appointment. The claimant spent over 20 years operating under umbrella arrangements as a specialist consultant to other firms. His assignments were mainly with well-known commercial firms in London. There is no reason to believe they were not satisfied with his work, or that his references had been anything other than acceptable. The appearance of the claimant having done many different jobs over the course of his career could have been discussed with him and an explanation obtained. Mr McHale accepted that commercial property work is a cyclical market, though he found it surprising that no firm ever sought to retain the claimant at the end of his assignments with them. Given the chance, the claimant could have explained to the respondent the reasons why he had worked for so long on short-term assignments. The quality of the firms for whom the claimant had worked would have been attractive to the respondent, even if their number was not. Ms Udalova-Surkova was impressed by the London connections and saw potential there. In March 2018 the respondent had a need for urgent assistance, and both parties envisaged at the time that the appointment might

be short-term. We therefore conclude that their intentions were compatible and the CV was not likely to have been a major obstacle.

19. Mr McHale said the next stage would have been for him to telephone one of the firms in the North West whose name Mr McHale recognised, where the claimant had worked briefly. In his statement Mr McHale related some very negative comments which he said had been made by this one employer and asserted that this feedback would have been fatal to his consideration of employing the claimant.

20. The claimant explained that this informal feedback was taken from a firm which conducted low value commercial property work for clients who were unwilling to pay good rates, and this was part of the reason why the engagement was unsuccessful.

21. Mr McHale's evidence ignores the fact that the claimant, not the respondent, would have been the one to identify an appropriate referee. The phone call was made for the purpose of this hearing, but no such enquiries were made in March 2018. Mr McHale did not produce a note of this conversation to us, erroneously taking the view that it was a privileged document. We doubted that this evidence had any contribution to make to the question of the claimant's suitability. Had references been taken up in the usual way, another, more positive working experience could have told a very different story.

22. Mr McHale said he would also have taken into consideration the remark the claimant made in reception on the day of interview, which he felt was inappropriate, potentially discriminatory and carried with it the risk that the claimant might be "extremely dangerous" to employ, given the risk of upsetting colleagues or clients.

23. The Tribunal agrees that the remark may have been ill-judged and ill-timed, but accepted the claimant's evidence that it was intended as a light-hearted joke prompted by the news report of the Novichok poisoning in Salisbury. It was not prompted by or directed to Ms Udalova-Surkova's Russian nationality. It had the potential to, and probably did, offend Ms Udalova-Surkova, but based on our findings in the liability judgment, it did not in fact influence her view that the claimant was a suitable candidate.

24. In their original witness statements neither of the respondent's witnesses made reference to there being a discussion at the 8 March board meeting about the claimant's remark, nor was this recorded in the notes of that meeting. If that had been such a serious obstacle to the claimant's appointment, the Tribunal would expect the respondent's contemporaneous records to have referred to it, and for its defence to this claim to have taken a consistent stance on the point.

<u>The terms on which any such appointment would have been offered</u>

25. Mr McHale said that had the appointment gone ahead, he would have found self-employed terms far more advantageous. The claimant had already offered to work as a self-employed contractor and indeed had spent much of

his career working on this basis. We therefore accepted that this would have been the nature of the engagement.

26. Mr McHale accepted in principle that any appointment would have begun fairly quickly, and we conclude that the contract would have begun on Monday 12 March 2018 as indicated to the claimant at interview.

27. The claimant had asked for a salary of £50,000 but made it clear to Ms Udalova-Surkova that he was working from a starting point of the former associate's salary, which he believed to be £45,000. The claimant put forward this figure at the remedy hearing and in his oral evidence Mr McHale agreed that £45,000, equating to £3,750 per month as a self-employed consultant, would have "sat comfortably" with him.

28. Mr McHale did not consider that a self-employed person would be entitled to any notice period, though he did accept the need for flexibility in a self-employed arrangement. He explained that all employees at the firm are taken on with an initial 3 month probationary period, during which the standard notice period is one week.

29. The Tribunal concluded that the self-employed consultancy contract would have contained provision for termination by either party, and that one week's notice would have been agreed so as to maintain flexibility and keep the terms in line with the solicitors who had employed status.

30. We then considered the likely duration of the appointment, and took account of all that Mr McHale said about the claimant's lack of suitability.

31. Mr McHale asserted in his witness statement that the claimant's engagement would have lasted no more than a few days or weeks, relying on the telephone feedback from the former employer, and on the claimant's conduct during the Tribunal hearing. He stated that the claimant had to be admonished by the Tribunal on occasion, and made allegations about the claimant behaving aggressively in the respondent's waiting room on the first day of the liability hearing. The Tribunal had been aware from the clerk that day that security had been told of an interaction in the respondent's waiting room, but we had no direct evidence about it nor was any complaint made by the respondent to the Tribunal at the time.

32. Mr McHale was correct to say that the Tribunal had cause to admonish the claimant on occasions, though not for aggressive behaviour. We encountered some challenging behaviour from the claimant, who was at times highly animated, interrupting frequently, and turning up extremely late for one session of the remedy hearing. That said, we felt it would be improper and unjust to allow this behaviour to factor into the exercise of assessing compensation, because presenting a discrimination claim without professional representation is an inherently stressful and challenging situation. We were satisfied that the claimant's behaviour was not borne of deliberate disrespect. His behaviour towards the respondent might also be explained in part by the hostile and aggressive manner in which the respondent defended this claim.

33. Overall, Mr McHale felt that the claimant would not have got along with colleagues and clients, and his employment with the respondent firm would have posed a serious risk to the business.

34. The claimant disagreed with Mr McHale's assessment of his personality, and said he sees himself as "charming, witty" and someone who always gets along with colleagues and clients. He is currently in a position with a local authority and that relationship is a successful one. We agreed with what he said in his witness statement, that:

> "The contentious scenario of my Claim, which the respondent has vehemently contested and the respondent's aggressive and unprofessional conduct of its response and defence, including threats to report me to my professional body and even blackmail, is completely difference from an office scenario.".

35. That said, in his summing up, the claimant did not press his cause with any particular vigour in that he recognised the realistic likelihood was a short period of employment with the respondent.

36. Although we are of the view that the claimant would have been appointed in March 2018, we accept that the respondent would have terminated the contract after a relatively short period of time. This is for two reasons, the first being a clash of personalities which we believe would inevitably have arisen. Even discounting the animosity which has arisen during these proceedings, we accept that the claimant's personality would not have been a good fit from Mr McHale's point of view. We agree that the two men would not have gelled and accept the respondent's case that the relationship would not have endured for a significant length of time. That would inevitably have led to a parting of ways, for non-discriminatory reasons. Mr McHale would have taken a dislike to the claimant and would not have seen him as part of the future of the firm. The comment about poisoning would not have endeared the claimant to him. As the owner and senior partner of the firm, Mr McHale would have played a dominant role in deciding whether to retain the claimant's services, and we are satisfied that he would not have done so.

37. The second reason for this conclusion is that we accepted Mr McHale's oral evidence that the firm ceased carrying out commercial property work in the months following March 2018, as the respondent felt the level of work in that field was not necessarily sustainable in the longer term.

38. Taking account of the evidence as a whole, we conclude that the claimant's appointment would have lasted for one month before the respondent would have given one week's notice to bring it to an end.

Loss of earnings & mitigation

39. Having made the above findings our conclusion is that the claimant would have been engaged by the respondent as a self-employed contractor earning £3,750 per month from 12 March 2018. After one month, by Friday 6 April 2018, the respondent would have given him one week's notice to terminate the contract with effect from 13 April 2018. Accordingly, the period of loss for which we consider the claimant should be compensated amounts to five

weeks, and we award compensation for loss of earnings in respect of that period, as follows:

12 March to 13 April 2018 = 5 week period of loss

£3,750 per month x 12 / 52 = £865.3846 per week remuneration

5 x £865.3846 = loss of **£4326.92 (A)**

40. The claimant produced evidence that he began new employment at Harrow Borough Council on 3 April 2018 earning more than he would have earned with the respondent. The fact that the claimant mitigated his loss means that credit must be given for the earnings received. His hourly rate for a 36 hour week is £40, equating to £1,440 per week. The Tribunal calculated the daily rate of pay as follows:

£40 per hour x 36 hours per week = £1440 per week

£1440 x 4.33 (to achieve an annualised figure) = £6235 per month x 12 months = £74,822.40 per year

£74,822.40 / 260 days = £287.78 per day x 9 days = **£2,590.00 (B)**

41. The mitigation earnings received for the period from 3 April to 13 April 2018 relates to 9 working days, such that the claimant's net loss of earnings is as follows:

Loss (A)	£4,326.92
Less (B)	(£2,590.00)
Actual loss (C)	**£1,736.92**

42. At the hearing the claimant touched on the subject of the accommodation costs he would have incurred if he had been working in the North West, being the cost of lodging with his sister. No clear evidence was put forward to support that claim and it was not pursued with any enthusiasm. The Tribunal did not accept that this was a loss flowing from the act of discrimination, as the claimant would have incurred accommodation costs even if he had been successful in the job application.

43. Given the short period of loss in this case, it was not relevant for the Tribunal to consider any further the respondent's arguments that the claimant had failed to mitigate his losses into the future. Had it been necessary for us to determine that question, we would have had no hesitation in concluding that the claimant did take all reasonable steps to find suitable work elsewhere.

Injury to feelings

44. In his first witness statement for the liability hearing the claimant said: “I was very disappointed, very dismayed and very angry” about the decision not to appoint him, and then he cited the events which led to that event. He did not provide much detail of the injury to his feelings, and was therefore directed to address this at the remedy hearing. He did make plain from the outset that

the injury to his feelings was aggravated by the respondent's conduct of the proceedings.

45. The claimant's statement for the remedy hearing explained that the treatment he received from the respondent aggravated the severe stress he was under due to his "seriously adverse and precarious financial position". He became even more fearful that he might not be able to find suitable work before his bank stopped all banking facilities and he would have been unable to pay even for his basic needs. In his oral evidence the claimant said that the respondent's reason for rejecting him – because of his age – affected him. He felt scared about possible bankruptcy due to his poor financial situation, and the impact this could have on his ability to practise as a solicitor.

46. The Tribunal accepted the claimant's evidence that he had suffered injury to his feelings. We noted that the duration of the period of injury was short-lived, and the act of discrimination had been a one-off act as distinct from a lengthy campaign of treatment. The claimant did not experience any problems with his health as a result and there were no prolonged effects on his wellbeing or his career. The injury was caused by the loss of an opportunity for a short-lived job until the next position came along, and overall the claimant was left in the same career position as previously. He was able quickly to obtain better-paying work (which he hopes may be long-term) and this helped ease his financial worries.

47. By the time of summing up his case the claimant revised his expectations by inviting us to make an award at the top end of the lower band of Vento, that range being at the time between £900 and £8,600. For its part, the respondent submitted that £3,000 would be a suitable award. For the reasons summarised above, the Tribunal concludes that an appropriate award for injury to feelings in this case is **£4,000**.

Aggravated damages

48. The Tribunal went on to consider whether it was appropriate to make an award for aggravated damages in this case, and if so in what amount. We took into account various aspects of the case, including the respondent's conduct of the proceedings. We also had in mind our conclusions on the respondent's conduct as set out in the reasons for our liability judgment. From the outset, when it filed its response to the claim, the respondent adopted an aggressive stance which in our view went beyond what was necessary and appropriate in defending this claim.

49. In his witness statement for the liability hearing Mr McHale described the claimant's claim as "opportunistic and an attempt to abuse process". Although some paragraphs of his statement were deleted by agreement, his general position was in keeping with the way the case had been pleaded, and until a very late stage the respondent maintained its position that the claimant's actions warranted reporting him to the professional regulator.

50. The evidence provided to us included some correspondence between the parties (not in the bundle but treated as exhibit "RIL1" to the claimant's first statement). During his cross-examination Mr McHale said the respondent had

had to “extract” from the claimant in correspondence that he had made a comment before his interview, which the respondent erroneously maintained had been denied by the claimant at the previous preliminary hearing. In fact, the Tribunal saw no evidence of this in the correspondence provided.

51. The respondent had the right to defend this claim in a reasonable and proportionate manner, but its choices as to how to defend it rendered it vulnerable to an aggravated damages award because it amounted in effect to a denial of the claimant's right to complain about discrimination. It was apparent to the Tribunal that the respondent had little insight into the possibility that it might have discriminated against the claimant inadvertently, even if not consciously. This stance was also at odds with its own Equality Policy.

52. In his second witness statement for the remedy hearing, Mr McHale expressed regret that his former partner, the employment solicitor who previously conducted the defence, had on occasion corresponded with the claimant in the way that he did. He said the former partner had genuinely believed that at the preliminary hearing the claimant denied making any remark at all to Ms Udalova-Surkova. Mr McHale found it understandable that his former colleague would have been “outraged” that the claimant, a solicitor, had made this denial, and may have seen the claimant as “devious and opportunistic”. Although Mr McHale was careful to say he was making no such allegation against the claimant himself, nevertheless the attitude imputed to his former partner was expressed in Mr McHale’s own words.

53. We find that Mr McHale must have seen and approved the form ET3 before it was filed, and that as the senior partner and 100% shareholder he would have had a close involvement in decisions about how to defend the claim throughout. His former partner was a senior and experienced employment solicitor, but he must have been acting on the instructions and with the approval of Mr McHale.

54. On reviewing the correspondence in exhibit “RIL1” the Tribunal noted that the claimant had written to the Tribunal on 27 January 2019 on the subject of his alleged denial of the comment at the preliminary hearing. That and the Tribunal's reply dated 7 February 2019 (both copied to the respondent) showed that the respondent knew then (or should have known) what Judge Slater’s notes at that hearing said. It was clear from the Tribunal's letter that the claimant had not made any blanket denial about his comment at interview, only that he had denied referring to “Russian nationality”.

55. Even if there had been some misunderstanding about what was said at the preliminary hearing, Mr McHale’s response to it amounts in our view to a gross overstatement of the position. Such a point of dispute in litigation is hardly a reason for treating a claimant as “devious and opportunistic”, nor less a reason to threaten a report to his professional body.

56. The Tribunal did not accept Mr McHale’s assertions that the conduct of the case was the responsibility of his former colleague and he had limited involvement. His attempts to distance himself from the conduct of the case

were inconsistent with the way he drafted his first witness statement and with the respondent's overall defence of the case.

57. Mr McHale did not feel that the claimant's feelings would have been injured to the extent claimed, for the purposes of the aggravated damages claim, on because as an experienced solicitor he would have handled difficult exchanges in the course of his work. The Tribunal was not impressed by this argument, partly because the claimant had practised almost entirely in a non-contentious field and also because the claimant had conducted his claim throughout as a litigant in person.

58. In his oral evidence Mr McHale said he took responsibility for the conduct of the defence but claimed that threats of the kind made by his former partner are “pretty common in litigation”. He conceded that it was not professional to make threats, and said: “I regret the way the firm conducted itself and it doesn’t reflect well on the firm.”

59. The injury created by the respondent's defence of the claim was compounded at every stage, including at the remedy hearing. In his second witness statement Mr McHale maintained that the claimant shared some culpability for the issue about what he had said at the preliminary hearing, and he could have “made life simpler” if he had simply admitted his comment all along.

60. The injury to the claimant caused by the respondent's conduct of the claim was apparent from his evidence and submissions to the Tribunal. In his original witness statement he referred to the impact of the injury, which was sustained over a longer period than the injury from the act of discrimination itself. It began on 10 September 2018 when the response was filed, continued to the liability hearing when the threat to report him to the SRA appeared in Mr McHale’s witness statement, and even though those passages were removed from his statement, the injury was ongoing up to the remedy hearing in that he felt the respondent was still not taking responsibility for its actions. The other aspect of the damage, aside from its duration, was that a report to the SRA could have potentially career-destroying consequences for a solicitor. The Tribunal accepted that evidence.

61. Taking into account all of the above factors, the Tribunal is satisfied that there is a proper basis for awarding aggravated damages in this case. Having discriminated against the claimant because of his age, the respondent's subsequent conduct of the Tribunal proceedings added considerably to the injury. Its aggressive and threatening stance was offensive to the claimant and demonstrated to the Tribunal that the claim was not being taken seriously. The respondent appeared to be outraged that a claimant should allege discrimination, and at no time did it contemplate the possibility that there might be merit in the claim.

62. The claimant suffered an aggravated injury which in our judgment warrants an aggravated damages award of **£6,000**. In arriving at this figure, the Tribunal ensured that it avoided duplication with the injury to feelings award and we conclude that this additional compensation properly reflects the aggravating features over and above the initial injury from the act of discrimination.

Interest

63. The Tribunal calculated interest of the awards according to the 1996 Regulations, by reference to the original act of discrimination on 8 March 2018. The date of calculation was 7 November 2019, and the overall period between those two dates was 609 days.

64. Interest was calculated on the loss of earnings award of £1,736.92 from the mid-point date between 8 March 2018 and 7 November 2019, which at the rate of 8% the Tribunal calculates to be **£116.11**.

65. Interest on the non-pecuniary awards for injury to feelings (£4,000) and aggravated damages (£6,000) is calculated at 8% over the whole period:

£10,000 x 8% x 609 days = **£1,334.80**

Summary

66. For the reasons set out above, the Tribunal makes the following awards of compensation to the claimant:

Loss of earnings	£1,736.92
Injury to feelings	£4,000.00
Aggravated damages	£6,000.00
Total interest	£1,450.91
Total award	**£13,187.83**

Employment Judge Langridge

Date: 27 January 2020

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
30 January 2020

FOR THE TRIBUNAL OFFICE

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2413801/2018**

Name of case: **Mr R Levy** v **McHale Legal Limited**

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: 30 January 2021

"the calculation day" is: 31 January 2021

"the stipulated rate of interest" is: **8%**

MR S ARTINGSTALL
For the Employment Tribunal Office

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at **www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426**

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.