



EMPLOYMENT TRIBUNALS

Claimant: Mr Daniel Phelps

Respondent: Dorset and Wiltshire Fire and Rescue Service

Heard at: Southampton (by video) **On:** 12 and 13 October 2020

Before: Employment Judge Fowell

Representation:

Claimant: Mr J Duffy of counsel

Respondent: Mr P Doughty of counsel

JUDGMENT

1. The claimant's dismissal was unfair.
2. Compensation is awarded in the sum of £6,765

REASONS

Introduction

1. Mr Phelps brings this complaint of unfair dismissal against Dorset and Wiltshire Fire and Rescue Service having been dismissed as a firefighter at the end of his probationary period. Usually of course, someone in their probationary period would not have the two years' service needed to bring a claim of unfair dismissal but the circumstances here are unusual. He had been working as a Stores Technician in the respondent's Trowbridge depot and was at the same time a retained or part-time firefighter. In 2018 he was selected for a full-time role and on 1 June 2018, having already done his two week basic training course, he went to join Green Watch at Swindon Fire Station. That meant a new probationary

period, this time of six months. That was subsequently extended by three more months, and each of those periods was extended by some time off sick, so a decision about his future was not made until late May 2019 by which time he had just achieved the necessary two years' service.

2. That length of service is not in dispute. The Fire Service were aware of it at the time. Nevertheless they stuck to the procedure set out in his contract of employment which simply provided that a decision would be made at the end of his probationary period. There was no right to a dismissal meeting and no right of appeal. The question therefore is whether that approach was fair in all the circumstances.
3. This hearing was conducted by video link, and I heard evidence from Mr Phelps himself and a former colleague in the HR department at Trowbridge, someone involved in his recruitment as a full-time firefighter, Rebecca Mehson. For the respondent I heard from his Watch Manager at Swindon, Mr Dean Hoskins, the Station Manager Mr Samuel Legg-Bagg, a Mr Nick Sjogren, the Corporate Assurance Manager who carried out an internal investigation into the dismissal, and Mrs Carol Swann, the Head of HR.
4. Mr Phelps' probationary period was very well documented and as might be expected there was little dispute about what actually happened. The main differences were over the significance of the criticisms made of Mr Phelps, and the approach taken by the Service in dealing with them. All of the witnesses were, I am quite sure, honest and conscientious in their approach. The case was also well prepared on both sides and I had a bundle of about 400 pages. Having considered that evidence and heard the submissions on each side I make the following findings.

Finding of Fact

5. Mr Phelps' employment began on 10 April 2017, just over a year before his move to Swindon in his new role. Each crew has a Crew Manager, in this case Mr Mark Atree and Mr Robert Harris. They report to the Watch Manager, who for most of the time was Mr Hoskins, and they comprise the watch management team. Above them is the Station Manager, Mr Legg-Bagg.
6. When Mr Phelps arrived the Watch Manager was a Mr Izon, who had a meeting with him on arrival to set expectations. He listed the points he wanted to instil in Mr Phelps. Point number 1 was the RESPECT Agenda. This is an acronym for Responsibility, Equality, Support, Professionalism, Excellence, Communication and Transformation. This policy sets out the culture and values of the Service. It is about the need to ensure professional behaviours and the "one-team ethos". It states:

“Behaviours describe the attitudes and approaches that we take to work (that’s how we demonstrate our values) and explain:

- how we do things
- how we treat each other
- what we say and how we say it
- how we expect to be treated
- how others see us

7. Examples of different behaviours which do and do not match the different aspects of the RESPECT agenda are then set out.

8. Mr Izon went on in his list of points to stress the need to avoid any racist, sexist or homophobic language, the need for a positive attitude, respect, effort, smartness, and some practical points such as that you should not use mobile phones while on an appliance (fire engine). He ended his list:

“You only get one development period as a [firefighter], everyone is remembered for their work ethic and attitude. Make it count.”

9. All this reflects the obvious fact that this is a disciplined service. It calls for team work, often under great pressure, and so a positive, disciplined, team-based approach is important to success and to the safety of each crew member.

10. After this introductory talk Mr Phelps had a series of informal meetings and appraisals, starting at the end of the first week. Mr Izon recorded that things were either good or satisfactory, but mentioned some concerns about conduct and comments made in a watch setting, and wrote down “Don’t try to run before you can walk.”

11. That was followed by a one-month probationary review meeting on 12 July 2018. This time he noted that Mr Phelps had a good attitude and growing confidence, although he had been late once due to his car-share letting him down. There were few causes for concern therefore in this early period.

12. On 13 September Mr Phelps had an informal meeting with the Crew Managers, Mr Harris and Mr Altree, who had noted some poor behaviour over recent weeks. These included giving a “V-sign” to Mr Izon at an incident – presumably in jest – and an incident in which he had been found flirting with a woman who ran some flats they were called to; he had to be told three times by Mr Altree to come away, ending with a direct order. There was also the use of inappropriate language, including the use of the word “spastic” in a particularly offensive context, and breach of the social media policy. Three posts were reproduced in

the bundle, each with pictures: one makes a rude joke about a Chinese person's accent and two others are clearly sexist in nature, one being disparaging about feminism and another about young women in general. These were circulated to his colleagues at work and to the Watch Managers. Mr Atree addressed this smartly at the meeting, handing him a copy of the social media policy.

13. Another concern was about him giving excuses and complaints about a toolbox talk he had to give. These are informal talks given to the other members of the crew about items of equipment or other topics, and they call for some research and effort. Part of the aim is to bring the presenter up to speed in that area. More minor complaints were also made about him using all the milk, being unapologetic about this, being resistant to any guidance from other firefighters and needing regular reminders about things.
14. A more formal, three month review followed on 8 October 2018, this time with Mr Harris. He noted down in general terms that there were concerns about poor attitude and social media posts, stating that he needed to work harder and with the team. But it also noted an improved level of confidence in giving tool box talks – he had given an excellent one on 21 September – indicating some balance in Mr Harris's approach. If anything, given the concerns about language and social media, his review form underplayed things.
15. Mr Atree made his own notes of the particular incidents as they arose, and they carried on over the next few weeks. At one incident he asked if he could take a selfie. When told no, he spotted a little girl taking photographs on her iPad and asked if he could give her his email address to get a copy of her photos. Again he was told no. Asked to do some research, then given extra time to complete it, he still made no effort. On the way to a road traffic accident he was asked to prepare a trauma pack, at which he became very negative and asked someone else on the crew to swap with him; when he was told afterwards to look through trauma pack to familiarise himself with it he did not do so.
16. So, following the 3 month assessment it was decided to increase his level of supervision. This involved the use of HR Form HR043, the "Work Assessment and Monitoring Form". It set out in more detail for Mr Phelps the actions needed under various headings and some review dates. The upshot was that he then had to have weekly meetings with Mr Harris and/or Mr Atree when the form would be considered. On each occasion positive behaviours were recorded in green ink and negative behaviours in red.
17. The first negative comment followed an incident two days later, on 10 October 2018. Mr Phelps came to work with a rib injury. He told a colleague about it but said not to tell anyone else. Clearly a firefighter needs to be fit and able to perform his duties, so this was not in accordance with the team ethos. It was reported to Mr Atree, who called him in to a meeting with him and Mr Harris.

When challenged about it Mr Phelps became upset and left the room in tears. That reaction vividly illustrates that he was finding his work and this degree of supervision a real strain. When he returned he said he was losing weight through stress. Perhaps as a result, the information from the toolbox talks was not going in. Mainly he was not happy with his three-month review. He felt that a lot of the problems cited were petty, and were the result of a personality clash.

18. Other issues were recorded over the coming weeks. At one drill session he said that it had been two weeks since he had used a major pump and so had forgotten it all. He went to sleep (as permitted) but with ear plugs in and so missed a call for an incident. When he was woken up he seemed to think it was a joke. Then there was the use of an “f” word at a client’s house, installing a smoke alarm or similar, and he was picked up for chewing gum on the drill ground. It is fair to say that none of these appears to be of major significance.
19. On 30 October 2018 Mr Phelps was off sick, not with stress but with an injury caused, he said, by falling off a bike. During a welfare call on 21 November he admitted that he had “told a bit of a porky” about this, and it had in fact been caused during a motocross event. He returned to work on light duties in his old Trowbridge depot in early December and only rejoined Green Watch on 26 December 2018. By then it had been decided, in fairness to him, to extend his probationary period by the period of sickness absence so that he could show that he had met the standard. (Strictly speaking the policy requires a decision after 6 months, taking into account any period of absence, but this common sense view in favour of extending it can only have helped him.) The decision was therefore put back to 26 January 2019.
20. As this date approached, a decision was taken by Mr Legg-Bagg the Station Manager, in consultation with the HR team, to extend his probation period by a further three months, as the contract allowed, and to place him on a Performance Improvement Plan. As the name suggests, this is a plan under which a positive improvement is required, otherwise he may be dismissed. It is a more intense version of the previous regime, although instead of the regular weekly meetings with his line managers there were to be a succession of three formal monthly review meetings leading up to a final decision.
21. February was uneventful, indicating some improvement, but before his first review meeting Mr Phelps went off sick, this time for some surgery. He was away for a few weeks so his probationary period was put back again, this time until 21 May 2019. On 15 March, the day before he was due back to work, he called Mr Harris and said his leg was still in pain and he was not well enough to return. He seemed upset. With a little probing it turned out that Mr Phelps’ son had to go into hospital the next day, and that was the real reason he could not come back to work. Mr Harris said he could have special leave.

22. Naturally, this lack of an honest reason was raised at the first monthly review meeting, which took place on 25 March. There was also a minor incident about having his boot on a chair while talking to a more senior officer, another about questioning whether the sickness policy had been applied to Mr Harris when he was off sick and finally trying to bypass his managers when he needed to get forms signed. But clearly the main item was the first one. On the plus side, it was noted that he had “much improved body language” and a “reduction in petulant teenage type behaviour”.
23. At around the same time Mr Phelps had a separate meeting with Mr Legg-Bagg, who was supportive. This was off site, at the Trowbridge depot, which was more private and also more convenient for them both. Mr Phelps had put in a request to be transferred to the Trowbridge depot, where he felt more at home, and no doubt that was discussed. Mr Legg-Bagg recognised that there was a clash of personalities in Swindon but told him he needed to rebuild his relationships with the watch management team. So, a couple of days later Mr Phelps went to see Mr Altree. In an unfortunate phrase, he asked him to “throw him a bone.” Pressed on this, he said Mr Altree should stop writing down all the negative things about him. Naturally, that was also then written down in red ink. The incident perhaps illustrates the different view of things taken by Mr Phelps and his managers. Mr Legg-Bagg no doubt intended that he rebuild relationships by fitting in as a member of the team, doing what he was told and making more effort; Mr Phelps seems to have taken this to mean making friends with Mr Altree and cajoling him to be more supportive.
24. The request to transfer was passed up to Mr Legg-Bagg’s senior, the Deputy Area Commander, Mr Moody. Although this move this would have been a good fit for the organisation, once Mr Phelps had qualified, he took the understandable view that it would be wrong to transfer him while he was under a Performance Improvement Plan.
25. Just before the second review meeting, which was held on 26 April 2019, there was an incident when the crew came across a man in the middle of the road, later described by Mr Altree as “a distressed male acting aggressively”. The crew were told to lock the doors and windows and not to engage with him. Mr Phelps however wanted to “deal” with him, whatever that meant, and had to be told three times not to get out. At the review meeting this was described as “absolutely unacceptable” and he agreed that he had been in the wrong.
26. It was not just this one incident however. Shortly afterwards he was found cleaning his boots before helping to clean down the vehicle and equipment with everyone else, and then when he was told about it he wandered off, asking other people about laundry procedures. At a drill exercise he made jokey comments over the radio about the pretend casualties, saying they were obese or had learning difficulties. He failed to send Mr Hoskins a presentation he was asked

for, one that he had already prepared, on aircraft and fuel. And then on another occasion, on the way to an incident he was told to get the breathing apparatus boards and other equipment on arrival, only to turn up empty-handed asking for instructions.

27. Against that there were some very positive comments from outsiders. Firefighter Green, presumably from Trowbridge, rang Mr Altree to say how good he had been on his recent detachment. A Mr Stoddart Gardens said he had been very professional in dealing with an occupier who wanted to flirt with him, and again has been polite, friendly and professional. Overall however there was more red ink than green.
28. A few days later, on 30 April 2019, Mr Phelps asked to have another meeting with the Station Manager, Mr Legg-Bagg. He was upset about some of the evidence gathered against him and felt that he was being unfairly singled out. Mr Legg-Bagg said he would speak to the watch managers then get everyone together to discuss the month's evidence. He then saw Mr Hoskins together with Mr Altree and Mr Harris on 6 May. He explained to them that Mr Phelps said that he felt unable to discuss things with them in the same way that he had with him (Mr Legg-Bagg) and that some of the points raised were indeed quite trivial. However the other managers felt that the sheer number of negatives still amounted to a serious failure.
29. Mr Legg-Bagg then had a further meeting with them later that evening, with HR involvement, and Mr Phelps was brought in. This meeting is only mentioned briefly and in the notes made by Mr Legg-Bagg, where he says that he wanted to facilitate an open and honest discussion where Mr Phelps felt able to discuss all the points on his PIP and that a positive discussion was had.
30. This was about two weeks before the end of the probationary period, and with this mix of formal and informal meetings the process had become rather confused. Mr Legg-Bagg was clearly trying to develop a more constructive dialogue, and given the efforts he was making it seems clear that his preference was for Mr Phelps to pass his probationary period. At the same time he did not want to override the watch management team. Mr Phelps was encouraged by his involvement, and was certainly not expecting a final decision to be made without a hearing where he could give his side of the case. As far as he knew, no one had actually failed probation before. Mr Legg-Bagg had even given him some reassurance that it should not come to dismissal and he knew that in general firefighters were only dismissed on serious grounds like gross misconduct.
31. The three-month review then took place on 21 May, involving Mr Legg-Bagg and the watch management team. Mr Phelps was not in the room, but it does not seem that any final decision was taken. He was called in the next morning for a

one to one with the Station Manager and the evidence was discussed again. He admitted that the things recorded had happened but said that other people do similar things, such as talking on their phones in the back of the appliance, or making rude gestures. Mr Legg-Bagg told him that there would be an outcome meeting the following morning.

32. In the meantime, Mr Legg-Bagg met again with Mr Altree, Mr Harris and Sarah O'Dea, the HR Business Partner. They reviewed the position and he decided "after much discussion" that Mr Phelps had not made the required improvement in his behaviours.
33. Hence, on 23 May 19, Mr Phelps had a short further meeting with Mr Legg-Bagg, where he was issued with a dismissal letter. Also present was Ms O'Dea, Mr Hoskins, Firefighter Francis (it is not clear why) and Mr Legg-Bagg's senior, Mr Moody. Mr Phelps was unaccompanied and there was no discussion.
34. He submitted an appeal the following week stating simply that he had been treated unfairly and that his welfare had been neglected. This was then referred to Mrs Swann, the Head of HR, who took the view that this was not a relevant ground of appeal given that he had failed his probation period. But that initial view was soon overtaken by events. On the day of his dismissal he, or someone on his behalf, made a whistleblowing notification, alleging that he had been dismissed too quickly and not been given enough support during his probationary period – in short, he had been unfairly dismissed. Rather than dismiss this attempt at an appeal by the backdoor it was decided to investigate it on its merits. No doubt this was on Mrs Swann's advice, reflecting the fact that he had two years' service.
35. That investigation was then undertaken by Mr Sjogren. It was an extensive exercise and he interviewed many people, or at least he received statements from them. As well as Mr Phelps there were four people he had worked with in Trowbridge, most of his managers and some firefighters from his watch at Swindon, including Jade Richardson who had been selected as a firefighter at the same time.
36. Mr Phelps said in his statement that he should have opted to re-do his basic training course before going to Swindon. He had been given the option and then it was removed, although he had in fact decided not to go back. He also felt that the management had been far too negative about him, he had struggled with his confidence to begin with and was very anxious about the toolbox talks. And other people did the same things, such as swearing or using a phone in the back of the appliance.
37. Firefighter Francis described him as a bit cocky, with a poor attitude to training. He mentioned the sharing of inappropriate posts and said Mr Phelps was not really a team player. He was also reluctant to accept criticism.

38. Firefighter Tadman, a Watch Manager at Trowbridge, used the phrase “Jack the lad” about him. He agreed that Mr Phelps’ attitude was not right, said he was amazed that he passed the selection and was not surprised that he failed. He also mentioned seeing him on the phone in the appliance as an example of his poor attitude.
39. Firefighter Richardson had been sharing lifts with him to Swindon and was in training at the same time. Overall she felt that he had been treated fairly. For example, he complained to her that he was taken to task for using his phone, but she did not do that, and for the simple reason that she had been told not to.
40. Firefighter Boughton also worked with him at Swindon and felt he had a poor attention to detail, had a poor attitude to the tool box talks, and again mentioned him being on the phone and making inappropriate social media posts.
41. Firefighter Ockendon was clearly a friend of his, but said that he lacked awareness of the formal environment he was in. She felt that the Swindon dept was “very straight down the line” and had always felt that he would struggle to fit in. When she did a shift in Swindon, she explained, she became aware that he had made a negative impression, and she also used the expression “Jack the lad”. However, she added that he was a lovely guy, and despite all these criticisms this too was a common theme. Everyone felt that for all these points he was very likeable.
42. Mr Sjogren reached his conclusion accordingly, after a fair and balanced review of the evidence, that Mr Phelps had not been treated unfairly, and so in due course Mrs Swann also decided to dismiss his appeal on the same basis.

Applicable Law

43. In considering whether this was a fair outcome the starting point, as ever, is the wording of the statute, section 98(4) of the Employment Rights Act 1996, which provides that:
 - “...the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) —
 - (a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
 - (b) shall be determined in accordance with equity and the substantial merits of the case.
44. This is a large public-sector organisation and so a high standard of fairness is required. It also involves the loss of a career, with all that that entails, so the need for fairness is acute.

45. The Fire Service say that he was dismissed on grounds of capability, alternatively for conduct, but this seems to me to be a clear capability issue. Dismissal for misconduct involves some punishment for past offences, either a single offence or an accumulation of smaller ones. The boundary is not always clear, but there is no sense here that past shortcomings such as the social media posts were held against Mr Phelps or totted up in any way. They were examples of past behaviours, behaviours which were addressed, and the Service was simply looking for him to demonstrate over a reasonable period that his behaviours were to an acceptable standard.
46. An employee's capability is defined in section 98 as "his capability assessed by reference to skill, aptitude, health or any other physical or mental quality" and in this case we are concerned with his aptitude for the role. What then does fairness require in assessing that aptitude? No cases were cited to me but the principles are well understood. Tribunals are required to have regard to the Acas Code of Practice on Disciplinary and Grievance Procedures (2015) ('the Acas Code'). This sets out principles for handling disciplinary and grievance procedures in the workplace, principles with which employers are expected to comply.
47. It contains a section on handling disciplinary issues (paras 5–31) that sets out the steps employers must normally follow, namely that they should:
- a. establish the facts of each case
 - b. inform the employee of the problem
 - c. hold a meeting with the employee to discuss the problem
 - d. allow the employee to be accompanied at the meeting
 - e. decide on appropriate action, and
 - f. provide the employee with an opportunity to appeal.
48. Those therefore are the essential principles and the introduction confirms that 'disciplinary situations' is intended to include 'poor performance'. It goes on to note that many employers have a separate capability procedure: 'If employers have a separate capability procedure, they may prefer to address performance issues under this procedure'. It adds that 'the basic principles of fairness set out in this Code should still be followed, albeit that they may need to be adapted'.
49. In this case, the employer's procedures were not adapted. Mr Phelps was not in fact dealt with under a capability procedure, simply the contractual provisions for his probation, but the onus remained on the Service to ensure that these principles of fairness were applied in circumstances where he had acquired the statutory right not to be unfairly dismissed. There appears to have been no real

recognition of this, although it was discussed with the HR Business Partner in May 2019. The view appears to have been that the normal procedure should suffice.

50. That is not to say that the capability procedure should apply instead to those with two years' service. Passing a probationary period is still an important requirement, and is marked with a change in salary. But the process ought to have been adapted to provide for a final hearing before a decision is made to dismiss, at which Mr Phelps could be accompanied, together with a right of appeal.
51. I realise too that the two year milestone was only passed in April 2017 and so without the extended periods of probation brought about by Mr Phelps' sick leave, there would have been no such obligation. That shows the Service being fair-minded in its approach and also perhaps reveals their expectation that he would ultimately pass. As it was, when the two year point arrived, some urgent consideration should have been given to the process to ensure compliance with the ACAS Code. Ideally another Station Manager should have held a final hearing to review the evidence, with a right of appeal to Mr Moody. That is not a criticism of Mr Legg-Bagg who, for the best of motives and in accordance with the advice given, had involved himself closely in Mr Phelps' situation.
52. It is however well-established that the lack of such a hearing is by itself enough to render a dismissal unfair. Even the lack of an appeal hearing will normally have that result.
53. The next question, applying the principle set out by the House of Lords in *Polkey v Dayton Services Limited*, is to assess what difference this failure made. What is the chance that if Mr Phelps has had such a hearing and right of appeal he would have been kept on?
54. He has made a number of points in this case and before his dismissal. The first is of double standards or of being singled out – that other people did the things he is criticised for such as using his phone in the appliance. Having raised that as an issue, fairness would then require it to be investigated. It was not. The point about phone use is mentioned in the subsequent interviews, surprisingly often, and that shows that he was certainly guilty of this. It seems to have been frowned on, which suggests that it was quite rare, but that is not the same as directly exploring with colleagues whether other people did it. It may be that he was on probation, and that he had been told not to, as had others, but if they did it too in front of him that would still be unfair and a point in his favour.
55. More generally, this illustrates some of the difficulty with relying on the whistleblowing investigation as an alternative approach. As already noted there seems to have been no interview with members of staff, they simply provided their own narrative statements. Hence, there is no exploration of the points he

raised. Were these points petty or commonplace? Did others swear? Or chew gum? Or put their feet on a chair? It is very difficult to know.

56. The focus of a whistleblowing investigation is also rather different. It is, or at least may become, a defensive exercise. It is undertaken when the organisation is accused of acting illegally. If it reaches the conclusion that it has, that is embarrassing and may be costly. Easier to conclude that all was handled appropriately. The situation may look differently at a dismissal hearing, before any such decision has been taken. Then it is the decision to dismiss which carries the risk. The organisation may be sued, and will also lose a firefighter after a long period of training.
57. Another point made by Mr Phelps in his evidence at this hearing is that in all the meetings he had with the watch management team he was on his own. Two or three more senior officers were noting down his faults. He said that if he objected they became very defensive. There was pressure to accept what they had written. This danger is particularly marked in a disciplined service, especially where one of the complaints is that he was not showing enough respect to his managers. Given that he was not expecting the process to end with his dismissal he may well have felt that the only sensible thing was to agree with the criticisms, even if the build-up of incidents was, objectively, painting an unfairly negative picture of him.
58. A further concern is that perhaps higher standards are applied in Swindon than elsewhere. There are hints of this in the evidence taken in the whistleblowing investigation, bolstered by the fact that Mr Phelps wanted to transfer back to Trowbridge. Staff from Trowbridge took the trouble to ring up and pass on positive feedback about him. So, if a manager from another station had made the ultimate decision, that concern would have been addressed. He or she would also instinctively feel less bound to the view formed by this particular watch management team, and would be better able to assess whether, as claimed, much of the criticism stemmed from a personality clash.
59. All this is to emphasise again the importance of a fair process. It is of course hard to assess how much difference that might have made since these concerns were not in fact squarely addressed. I have to make some assessment however. I take the view that Mr Legg-Bagg was supportive of Mr Phelps and that he ultimately took the decision to dismiss him, after extensive discussion with him and the watch managers. It is fair to say that there was an accumulation of incidents over a long period, and that at each review some new thing had arisen, such as the episode over getting time off for his son's operation or the incident with the man in the road. These are not points that can be written off as subjective or petty. At the same time, he records that the decision was taken "after much discussion" and so was not an easy one. Overall, doing the best I can with these competing indications, it seems more likely than not that a full and

fair process would ultimately have led to the same conclusion, given the accumulation of evidence, but there is nevertheless a real prospect that a broad and independent assessment of the extent of his shortcomings, with another manager or on appeal, would have reached a more lenient view. I assess that chance as 30%.

60. I make no further deduction on grounds of contributory fault as this is not a conduct case. There is however a clear breach of the ACAS Code, for which damages can be increased by up to 25%. Having heard brief submissions on this point, I accept that an extensive exercise was carried out by the Service, albeit that the last key stages were omitted, and so I assess this uplift at 15%.
61. Mr Phelps has obtained further employment as an arborist, and his schedule of loss sets out his claim for losses over a period of about seven months. Having given the decisions above on liability the parties were able in short order to agree the appropriate figure for compensation as **£6,765**.
62. Finally, I took the view that reinstatement or re-engagement were not appropriate in view of my conclusion that the ultimate decision by the Service about his aptitude is likely to have been correct.
63. For all the above reasons the claim is upheld.

Employment Judge Fowell

Date: 14 October 2020

Judgment and Reasons sent to parties: 28 October 2020

FOR THE TRIBUNAL OFFICE