EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Reverend J G Hargreaves	**v**	**Evolve Housing + Support**

Heard at: London Central

On: 9 October 2020 and 26 November 2020 (in chambers)

Before: Employment Judge A James
Mr D Clay
Mr M Simon (joining by video link)

Representation

For the Claimant: Mr P Diamond, counsel

For the Respondent: Ms C Urquhart, counsel

JUDGMENT ON REMEDY

1. The respondent is ordered to pay to the claimant the sum of £5,000 for injury to feelings plus interest in the sum of £663.01, a total of £5,663.01.
2. The claimant's claims for aggravated damages, exemplary damages, stigma damages and for costs do not succeed and are dismissed.

REASONS

The Issues in the case

1 In a judgment dated 18 May 2020, revised under the slip rule on 11 June 2020, the claimant succeeded in the claims set out below. The remedy hearing was listed for 9 October 2020 for the tribunal to decide the appropriate level of compensation, in the light of the discrimination found. In addition to claiming injury to feelings, the claimant claims aggravated damages, exemplary damages, stigma damages and costs.

The Hearing

2 The hearing took place over two days. Evidence and submissions on liability were dealt with on the first day. The hearing took longer than originally envisaged, given the anticipated remedy issues, so the tribunal had to reconvene and meet in chambers on 26 November 2020. The tribunal was able to reach its unanimous decision on that day.

3 The tribunal heard evidence from the claimant and from Ms Elspeth Hayde, Director of People and Culture, for the respondent. There was an agreed remedy bundle of 239 pages.

4 At the outset of the case we were asked to rule on the question as to whether the claimant could proceed with his claim for aggravated and exemplary damages, if no formal application to amend had been made.

5 A preliminary hearing had taken place on 11 June 2020. Paragraph 1 of the Orders section of the Case Management Summary and Orders sent out following that hearing states:

> *"The claimant is hoping to obtain legal advice shortly. If the claimant decides, following receipt of that advice, to claim for aggravated and/or exemplary damages, an amendment may be required to the claim. Any application, if one needs to be made at all, should be made as soon as possible." (emphasis in original)*

> Order 7 deals with witness evidence and states:

> *The claimant's witness statement must include a statement of the amount of compensation he is claiming, together with an explanation of how his feelings have been injured as a result of the discriminatory conduct that has been found proven.*

6 It was stated at the remedy hearing that no formal application had been made. In fact, our records show that the claimant did make an application on 3 July 2020. The respondent was therefore on notice that those claims would be pursued and it has provided written submissions in relation to those issues.

7 Having considered the matter afresh at the commencement of the hearing, it was the unanimous view of the tribunal panel that the claimant did not need to make a formal application to amend his claim, in order to proceed with an application for aggravated and exemplary damages at the remedy hearing. We therefore heard full argument in relation to that issue. In any event, given that the claimant's feelings about what has happened to him are still running high, we decided that it was far better to deal with all of the matters raised, rather than reject them on a potential 'technicality'. Yet further, given that the claimant had made an application on 3 July 2020, three months before the remedy hearing, it would have been just to allow the claim for such damages to proceed under the *Selkent* principles.

Liability Judgment

8 The judgment section of the amended judgment on liability states:

(1) The claims for harassment related to religious belief (Equality Act 2010, sections 26 and 40) succeed in respect of the allegations that (1) Ms Akano ignored the claimant on 1, 2, 4 February, 24 and 26 April and 7 May 2019; and (2) the claimant was questioned during the grievance process about the claimant's social media posts about the Scottish Christian Party.

(2) The claim for direct discrimination because of race (Equality Act 2010, sections 13 and section 39) succeeds.

9 The following paragraphs were referred to by the parties at the hearing/in their written submissions. The number in square brackets denotes the corresponding paragraph number in the liability judgment.

10 *[24]: On 1 February 2019, the claimant said good morning to Ms Akano when she arrived at Beacon House. She was wearing headphones at the time, which she took off and said to the claimant's colleague Mr El Sheikh "*I couldn't hear a word you said*". Mr El Sheikh repeated: "*Good morning*", to which Ms Akano responded: "*Good morning*". When the claimant said good morning to Ms Akano again, his greeting was ignored. When the claimant challenged Ms Akano about ignoring him, and the need for colleagues to be respectful towards each other, Ms Akano said that she did not respect him. The claimant told Ms Akano that he would be making a report to his manager about what had happened. He did not however indicate that he would be raising with his manager a complaint of discrimination, contrary to the Equality Act.*

11 *[28] On 4 February 2019 another interaction took place at the evening handover. When the claimant spoke to Ms Akano at 9 pm he was again ignored by her. He complains that she had in effect "sent him to Coventry". He removed himself to the lounge area. At 9:30 pm he returned to the office and asked Ms Akano for the handover. She started to do so but when his colleague Mr El-Sheikh arrived, Ms Akano turned her attention to Mr El-Sheikh, making eye contact with him only. She answered questions regarding the handover from the claimant but otherwise did not engage with him. He again complained to his line manager Ms Bayes by email and referred to Ms Akano's behaviour as being "*a continuation of the pattern of abuse that I have reported to you and that we discussed yesterday*". Again, he did not use the term discrimination or similar words in that email.*

12 *[29] On both 5 and 8 February 2019 Ms Footitt spoke to Miss Akano. The purpose of those conversations was to advise Ms Akano that however angry she felt about anything that the claimant had said to her, she: "*Must not ignore GH or anyone in the workplace as this is seen as bullying and [she] needs to remain professional at all times*". On 8 February, a similar conversation took place. Ms Akano clearly stated that she was not happy that she had to suppress her emotions as the claimant "*was the one in the wrong*". Ms Footitt's note continues: "*I made it clear that no matter who is right or wrong, we all have to remain professional and filter/channel these emotions in a way that does not compromise our work practice and that of others*".*

13 *[31] On 11 February 2019 the claimant asked for safeguarding measures to be put in place, so that he did not have to "cross paths" with Ms Akano. Ms Bayes emailed the claimant back the same day, to state that he should: "*Leave the handover to your night concierge colleague, whenever your shifts coincide with those of Elizabeth Akano, you may base yourself in the manager's office until

EA has left the building, or it is your time to leave in the morning*". He was advised to only communicate with Ms Akano in writing if possible. If it was necessary to speak to Ms Akano, he was told to ensure that a third party was present.*

14 *[37] Prior to the meeting, Mr Deakin was advised by Ms Blaszczyk not to speak to the claimant about his views on the Bible, other online material he had printed off about the claimant, or the interviews with Savannah and Georgia. Despite having been so advised, Mr Deakin did question the claimant at the meeting about his membership of the Scottish Christian party. The claimant objected to this line of questioning, and Mr Deakin was advised by Ms Blaszczyk to stop it.*

15 *[41] Mr Deakin recommended that Ms Akano be given management guidance "*with a subsequent file note made as part of her 1:1 meeting regarding remaining professional and courteous at all times. Any further discussion on disciplinary measures to be had by managers and HR should this continue. EA to attend E&D training if not completed within previous year*". The management guidance was duly given.*

16 *[44] In relation to the allegation against Ms Akano that she ignored the claimant Mr Deakin concluded: "*EA states that at this time she did not feel she respected him due to his views on homosexuality and religion*".*

17 *[47] In the recommendations section it was recommended that the claimant be given management guidance regarding expectations of conduct in the workplace, together with management guidance regarding Evolve's expectations in terms of online presence and external activity. Again, management guidance was duly given.*

18 *[50] In response to these further allegations, on 26 April 2019, the same day, Ms Footitt informed Ms Akano that she was being moved to a mid-shift as a result of the further allegations from the claimant. This reduced the possibility of the claimant having to interact with Ms Akano.*

19 *[54] Both the claimant and Ms Akano attended a training event on 7 May 2019. In an email dated 9 May 2019 to Ms Bayes, the claimant complained that Ms Akano: "*Continued her abusive behaviour of ignoring me completely on Tuesday, whilst engaging with everyone else on the course*". We accept the respondent's explanation that the claimant and Ms Akano were put on the same course due to a mistake. It was not down to any deliberate intent.*

20 *[89] As to whether her conduct was related to religious belief, we find that it was. It arose out of Ms Akano's conversation with the claimant in the middle of January 2019. She was clearly upset by the claimant's comment which appeared to make a link between paedophiles and the gay community. We say more about that comment when considering issue 1.3 below. It is sufficient to record at this point that we consider Ms Akano's concerns about this comment were understandable. However, matters did not end there. Following their conversation, Ms Akano made internet searches about the claimant. She did not like what she saw relating to his religious beliefs. The initial conversation took place on 14 January. Ms Akano started to ignore the claimant on 1 February, over two weeks later. We therefore conclude that it was the claimant's religious views and in particular his religious views about homosexuality, and not simply the comment about paedophiles, that influenced*

her subsequent refusal to interact with him. Her conduct towards the claimant was therefore related to religious belief.

21 *[90] Ms Akano subsequently told the claimant that she did not respect him. We conclude from this comment that her purpose in ignoring him, was to create a humiliating etc environment for him. In any event, we conclude that the effect of her ignoring him was to create such an environment. The claimant was not being over-sensitive. He was genuinely upset by Ms Akano's treatment of him, which created a hostile environment for him, albeit at the lower end of the scale of seriousness.*

22 *[93] We have found as a fact that Mr Deakin questioned the claimant at the grievance hearing on 4 March 2019 about posts relating to his association with the Scottish Christian Party. Since this was not a matter raised in Ms Akano's grievance Mr Deakin was advised by HR not to question the claimant about the Bible, or about his online activity. When he was questioned at the meeting about the Scottish Christian Party, the claimant objected to that line of questioning. Mr Deakin was advised by the HR representative Ms Blaszczyk to cease that line of questioning. The minutes of the meeting do not include reference to the questions asked, even though the evidence shows that such questions were asked. The absence of that line of questioning from the minutes is further confirmation, in our view, that it was not appropriate.*

23 *[96] Finally, we conclude that questioning the claimant about these matters at the grievance hearing was not done with the purpose of creating a hostile or humiliating environment.*

24 *[98] As to (c), we do not consider that the grievance outcome was biased, partial or otherwise detrimental. We consider that both of the grievance outcomes were reasonable and expressed in measured terms. If Mr Deakin was biased against the claimant, to the extent claimed, he would have been likely to have arrived at a different conclusion on Ms Akano's grievance against the claimant. Both her and the claimant were subject to what we conclude was reasonable management guidance. See further on that our conclusions regarding Issue 1.3 below.*

25 *[99] Further, we conclude that the grievance outcome was not related to the claimant's religious belief. The questioning of the claimant about his online presence, including his membership of the Scottish Christian Party did not form any part of the findings on the grievance, or the grievance outcome letters.*

26 *[101] The management advice set out by Ms Ives in the grievance appeal decision letter was in response to the claimant saying to her at their meeting that it was reasonable for him to say: "*in response to Liz and anyone who says that 'people are born gay', that paedophiles would also say that they were born that way. This is my standard response to the argument about people being born as homosexual. It is not illegal to put the two words in the same sentence*".*

27 *[102] The claimant is correct to say that it is not illegal to use those words together, in the sense that it is not a criminal offence. Many people however, whatever their sexual orientation, who do not share the claimant's deeply held and genuine religious beliefs, would find the use of those words in that context to be offensive. Ms Akano found them offensive, as did Mr Deakin and Ms Ives. The members of this tribunal understand why they would do so. Indeed, making*

such a remark in a work context could well amount to harassment related to sexual orientation.

28 [132] We would like to add the following. First, in finding as we have in relation to Issues 1.2 (a), it appears to us that Mr Deakin allowed his personal objections about some of the content of the claimant's online presence to cloud his judgment in one respect when it came to the claimant's grievance. We are confident that Mr Deakin will be willing to reflect on this, in the same way that he was willing to concede during his evidence that his decision not to interview all of the claimant's witnesses was, in hindsight, a mistake.

29 [133] Second, this case raises extremely difficult questions about the balancing of legal rights to freedom of speech, freedom of expression, religious belief and sexual orientation. Balancing those rights is not easy and navigating between them can result in employers walking something of a legal tightrope.

30 [134] Our findings in this case do not detract from the fact that the respondent provides a valuable service for vulnerable young people and the claimant, who is by all accounts a competent employee, assists the respondent to provide that service. It is our sincere hope that the parties will be able to learn from what has happened and quickly put it behind them so that the valuable service they provide is not adversely affected.

Findings of fact

31 The clamant made a number of unsubstantiated allegations in the evidence he provided at the remedy hearing. We shall deal with a number of these in turn since they are relevant to the question as to whether the obvious hurt the claimant still feels were caused by the discriminatory treatment we found to be proven. Alternatively, to what extent do they result from his perceptions as to what happened during the liability hearing and since then; and/or about the other claims before the tribunal which we did not uphold.

<u>'Admission' of Debra Ives</u>

32 The claimant suggested to us that Debra Ives admitted she lied to the tribunal at the liability hearing. We did not make any finding to that effect. We reject the suggestion that Ms Ives made any such admission. Ms Ives accepted in cross examination that something she had stated in her evidence was not correct. That is not the same as admitting that she lied. Rather, when the point was put to her, Ms Ives properly conceded that her account was not accurate and accepted the claimant's account as being correct.

<u>Notes of grievance hearing</u>

33 The claimant relies also on the respondent's initial failure to include the notes of the grievance hearings in their disclosure. This was an error by the respondent's solicitors, not by the respondent. When the error was pointed out, it was rectified. There was no attempt by the respondent to suppress this document.

<u>CCTV footage</u>

34 The claimant argues that the respondent deliberately destroyed relevant CCTV evidence. We did not make any finding that the CCTV evidence was deliberately destroyed. We specifically reject that contention. The CCTV

evidence was no longer available by the time of the grievance hearings in March 2019. Although the CCTV footage should have been available, e do not find anything sinister in the fact that it was not. It had been viewed by Ms Footitt who concluded that it did not show anything significant. Despite that, the CCTV evidence should still have been made available to the claimant and it should have been retained. The respondent accepts that and has since tightened up its procedures in relation to the retention of CCTV evidence, to avoid this happening in future.

The claimant's grievance of 28 February 2020

35 On 28 February 2020, the claimant submitted a grievance against Jon Deakin, Debra Ives, Elspeth Hayde and Clare Footitt. He accused them all of committing acts of gross misconduct. He later submitted grievances against Alice Hainsworth and Eleanor Bayes. He made clear during the grievance process that the outcome he sought was the dismissal of those managers. The grievance was investigated by Ms Heather Storry, an external consultant. The outcome was provided to the claimant on 7 August 2020. Of the 34 complaints made, only one, relating to the finding of the tribunal against Mr Deakin, were upheld.

Press coverage

36 The clamant has been upset by some of the press coverage about the tribunal's judgment, some of which has been somewhat selective, as is often the way with the reporting of detailed legal judgments. We find that members of the press were aware of the hearing, through a journalist's links with the claimant and the Christian community he is part of.

37 The claimant argues that a press release was sent out by the respondent following the publication of the judgment. That is not what happened. A quote from the respondent did appear in an article in the Daily Telegraph dated 2 June 2020. However, that was contained in a response sent by the respondent to that newspaper following the receipt of an email from a journalist on the same day. At no stage did the respondent issue a general press release. The email stated:

> *Here is our comment: We are still considering the judgment but were pleased to see that the Tribunal found in our favour in relation to a large proportion of the specific allegations but recognise that there were findings against us on a small number of discrete points, mostly relating to an ex-employee. We will be considering internally what lessons can be learned.*

38 A similar statement appeared on the respondent's intranet. The claimant believes that this statement is misleading and is an attempt to make light of or to distort the findings of the tribunal. We shall return to this in our conclusions.

Notification to funders

39 Since the publication of the judgment, the respondent has notified its funders of the findings against it.

Equality, Diversity and Inclusion Group

40 Ms Hayde's statement at paragraph 11 confirms:

In terms of wider learning by the organisation, Evolve has an Equality, Diversity and Inclusion group. The group has been meeting since March 2020 and has an action plan in place for the organisation. Membership consist of 13 members of staff, two customers and a board member. The focus for the group is to review the EDI policy and to recommission appropriate training for board members, senior managers and all members of staff. The training brief will ensure that all aspects of equality and diversity are covered including religion and race. The organisation is also a full member of the Housing Diversity Network and seeks guidance and advice from them when needed e.g. we have recently worked with them to formulate individual risk assessments for our staff in relation to Covid-19 and this includes a risk plan for those people who may be at higher risk due to age, ethnicity and gender. We are committed to delivering our EDI action plan and have invested in an EDI Advisor role to focus on this work.

41 Ms Hayde continues at paragraph 16:

As is hopefully clear from the above, we take the Tribunal's decision seriously and as an organisation we have learned from the findings that went against us.

42 We accept this evidence.

Mr Deakin – reflection meeting

43 As noted above, Mr Deakin is one of the managers against whom the claimant took out a grievance in February 2020. On 12 June 2020 Mr Deakin spoke with his line manager about the judgment. He was asked to reflect on the findings of the tribunal. The following is noted at the conclusion of the notes of that meeting:

Jon explained that there was clearly learning from this that will be taken forward as part of continued professional development.

Claimant's approach to councillors

44 On 13 June 2020, the Claimant emailed Ms Storry indicating his intention to claim aggravated damages and said he planned to:

Canvass every council… and government agency that Evolve Housing + Support have contracts with. We will ask them to compare Alice Hainsworth's statement with the actual Judgment. We will then ask whether, knowing the truth about the Judgment, their organisation would continue working with Evolve Housing + Support as they have done in the past. We only need to find one contractor that says they will cancel or withhold a contract work in access of £50k and our argument is proven…" [sic]

45 The claimant subsequently sent emails to various councillors. We were shown an email to a councillor at the Royal Borough of Kensington and Chelsea dated 21 September 2020. This quoted from the judgment section of our reserved judgment but did not include a full copy of it. The claimant also included the response to the press query date 2 June 2020 and asked, amongst other things, whether the response was "an honest representation of the outcome of the case or do you find the press release misleading"? It concluded:

Apart for servicing the need of the Employment Tribunal, I believe that this canvass will provide a valuable insight into the extent that local authorities will support, engage and do business with organisations, such as Evolve Housing + Support, who have been found guilty of racial discrimination; especially in the wake of 'Black Lives Matter'.

Alleged perjury

46 On 4 September 2020, the Claimant contacted the Information Commissioner's Office (ICO), in an attempt to recreate the conversation Mr Deakin says he had with the ICO prior to him considering the claimant's online material. On the basis of this phone call, the claimant reported Mr Deakin to the Metropolitan police for alleged perjury at the liability hearing of his claim, listing nine witnesses including Employment Judge A James.

The Law

47 The Tribunal's power to award compensation for injury to feelings is to be found at s124 *Equality Act 2010* which reads:

(1) This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 120(1).

(2) The tribunal may—

(a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;

(b) order the respondent to pay compensation to the complainant;

(c) make an appropriate recommendation.

(3) An appropriate recommendation is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect [on the complainant] of any matter to which the proceedings relate ….

48 Relevant legal principles governing the award of damages for injury to feelings are summarised by HHJ Eady QC in *Cadogan Hotel Partners Ltd v Ozog (UKEAT/0001/14/DM)* which states at §27-31:

a. There must be an unlawful act of discrimination to which the award relates;

b. Awards for injury to feelings are compensatory and not punitive;

c. Tribunals should not over-compensate by seeking to punish a respondent, for example due to indignation at the employer's conduct;

d. The task of the Employment Tribunal is to consider what degree of hurt feelings has been sustained and to award damages accordingly;

e. When considering the appropriate Vento band, the Tribunal should take account of factors such as whether the discrimination formed part of a campaign of harassment over a longer period, and what actual loss was attributable to the discrimination suffered.

49 In the Court of Appeal, Mummery LJ gave guidance on the level of awards for injury to feelings in *Vento v Chief Constable of West Yorkshire Police (No 2) [2003] IRLR 102* at 65:

65. Employment tribunals and those who practise in them might find it helpful if this court were to identify three broad bands of compensation for injury to feelings, as distinct from compensation for psychiatric or similar personal injury. (i) The top band should normally be between [£27,000 and £45,000]. Sums in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race… Only in the most exceptional case should an award of compensation for injury to feelings exceed [£45,000]. (ii) The middle band of between [£9,000 and £27,000] should be used for serious cases, which do not merit an award in the highest band. (iii) Awards of between [£900 and £9,000] are appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence. In general, awards of less than [£900] are to be avoided altogether, as they risk being regarded as so low as not to be a proper recognition of injury to feelings. [Note - the figures in square brackets reflect the updated figures in the Presidential Guidance on the Vento bands dated 25 March 2020. These figures include the *Simmons and Castle* uplift.]

50 The case of *Komeng v Creative Support Ltd [2019] 4 WLUK 651* is authority for the proposition that it is not the case that only one-off incidents fall within the lower Vento band (see §19).

51 Under regulation 2(1)(b) of the *Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996*, the Tribunal must consider making an award of interest whether or not it has been raised by the parties. The rate set by section 17 of the Judgments Act 1832 is currently 8%.

52 The principles governing awards of aggravated damages are set out by Underhill P in *Commissioner of the Police of the Metropolis v Shaw [2012] ICR 464*, EAT who held:

a. Aggravated damages are compensatory, not punitive (§20);

b. They are awarded only on the basis and to the extent that the aggravating features have increased the impact of the discriminatory act or conduct on the applicant, and thus the injury to their feelings (§21);

c. The circumstances attracting an award of aggravated damages fall into three categories:

i. The manner in which the wrong was committed (for example if it was "high-handed, malicious, insulting or oppressive" or "exceptional (or contumelious) conduct which has the effect of seriously increasing the claimant's distress" (§22a);

ii. Motive – conduct based on prejudice or animosity, or is spiteful or vindictive – but only if the Claimant is aware of the motive in question (§22b);

iii. Subsequent conduct – for example failing to take the claimant's complaints seriously, or failing to apologise. "[T]ribunals should be aware of the risks of awarding compensation in respect of conduct which has not been properly proved or examined in evidence, and of allowing the scope of the hearing to be disproportionately extended by considering distinct allegations of subsequent misconduct only on the basis that they are said to be relevant to a claim for aggravated damages" (§22c);

d. When considering the amount of aggravated damages, the Tribunal must beware of double recovery and must consider "whether the overall award is proportionate to the totality of the suffering caused to the claimant" (§23);

e. Ultimately the question for the Tribunal is "what additional distress was caused to this particular claimant, in the particular circumstances of this case, by the aggravating feature(s) in question?" (§24).

53 The principles governing the award of exemplary damages were set out in *Rookes v Barnard (No 1) [1964] AC 1129* as being "*oppressive, arbitrary or unconstitutional action by the servants of the government*" (at p1226) or cases in which the defendant's conduct has been calculated to make a profit which may exceed the compensation payable to the claimant. This category is not confined to financial profit. Exemplary damages "can properly be awarded whenever it is necessary to teach a wrongdoer that tort does not pay" (p1227).

54 In *Bradford City Metropolitan Council v Arora [1991] 2 QB 507* Farquharson LJ emphasised the "exceptional nature" of exemplary damages awards which will only be made if the conduct falls into one of the categories identified in *Rookes v Barnard*, and then only if the amount of compensatory damages is insufficient to punish the defendant for his "outrageous conduct" should the question of exemplary damages even be considered at all (p519-520).

55 We have adopted these principles from Ms Urquhart's skeleton argument, on the basis that there was no material dispute between counsel about them.

56 We were referred to a number of other legal authorities by Mr Diamond which, whilst certainly of interest, did not assist us further on the facts of this particular case, as set out above and in our liability judgment.

Decision

General discussion

57 It is clear from the information put before the employment tribunal by the claimant, including his oral evidence, that he has been deeply upset, and remains deeply upset, at what has happened. In considering the appropriate level of the injury to feelings award however, we remind ourselves that we must relate the award to the unlawful acts of discrimination found proved; that awards are compensatory and not punitive; and that our task is to consider what degree of hurt feelings has been sustained due to the discrimination and to award damages accordingly.

58 The claimant's witness statement for the remedy hearing was 16 pages long, but most of it deals with the matters referred to above. Virtually none of it describes the feelings of hurt which the claimant has suffered as a result of the discrimination found proven. This is despite case management order 7 from 11

June specifically directing him to do so. The tribunal does recollect and take account of the fact that towards the end of the liability hearing, the claimant became tearful and needed to take a few minutes to recover. But the lack of other specific evidence as to the specific hurt resulting from the specific acts of discrimination found proven has not helped us in the task before us.

59 We also take notice of the fact that the claimant made a number of other allegations of discrimination/victimisation which were not upheld. We fully respect the claimant's right to take issue with our conclusions on the other issues. Equally however, we must only award compensation for the discrimination which we found did occur.

60 We also conclude that much of the upset that the claimant feels and continues to feel, is because of unreasonable perceptions about what happened at the liability hearing and since then. These include his belief that there was a press release put out by the respondent, instead of a response to an approach from a newspaper. We refer to our findings of fact relating to that matter above.

61 We conclude that the respondent was not trying to make light of the judgment in that response. Rather, the respondent was engaged in an understandable damage-limitation exercise. It is factually correct that the claimant lost more claims than he won and that most of the claims he won were regarding an ex-employee. The respondent made clear that it was considering the lessons to be learned. We therefore reject the claimant's contention that the comments were an attempt by the respondent to underplay the tribunal's findings.

62 We refer to our findings of fact in relation to the claimant's belief that Mr Deakin has committed perjury. None of the members of the tribunal consider that there is any reasonable basis on which we could conclude that is the case, on the basis of the conversation the claimant had with the ICO.

63 Further, we do not agree with the claimant's contention that the CCTV evidence was deliberately 'destroyed'; that documentary evidence was deliberately suppressed; or that Ms Ives lied to the tribunal. The procedure about retention of CCTV evidence has been improved by the respondent since the last hearing. That is a reasonable response by the respondent, again demonstrating that it is willing to learn the lessons from this case.

64 Mr Deakin is one of the six managers whom the claimant believes should be sacked by the respondent. We conclude that Mr Deakin has discussed the judgment with his line manager, he has taken the conclusions on board, and is willing to learn the lessons. The respondent is confident that he will act differently in future and that such an incident will not happen again. We conclude that their assessment is a reasonable one.

65 We conclude that there is no reasonable basis on which the respondent could sack any of those managers against whom the claimant took out his grievance, following the liability hearing. We are sorry that the claimant believes differently.

66 As for the emails to councillors, we conclude that the email does not tell the full story because it does not include a copy of the full judgment and written reasons, just a very brief extract from it.

67 The claimant told us that he did not want to harm the respondent. The claimant stated however in his email to Ms Storry: "*We only need to find one contractor that says they will cancel or withhold a contract [worth] in [excess] of £50,000*

and our argument is proven". The claimant clearly recognised that the sending of the email which was subsequently sent to councillors, could adversely affect the respondent's funding. That would inevitably harm the organisation. The claimant's insistence that this was not his intention is therefore surprising.

68 Further, the claimant's approach to the councillors appears to be based on a fundamental misconception relating to the law on exemplary damages. The reference to a respondent trying to profit from a discriminatory act, must in our view refer to the act of discrimination itself, not to subsequent conduct. None of the acts of discrimination which we found proven were committed by the individuals concerned, with a view to making a profit for the organisation, in excess of any amount of the tribunal might award for that discrimination.

69 The respondent has sent a copy of the judgment to its funders. Again, we conclude that this is not the action of a respondent intent on minimising the findings of a tribunal decision. Rather, it is the action of a respondent which is quite reasonably trying to protect the organisation's funding so that it can continue to offer its services to its residents. Moreover, the respondent has confirmed that steps are being put in place to prevent a recurrence.

70 It follows that whilst we accept that the claimant has been hurt by the discrimination that did occur, we consider that the extent of his feelings of hurt, which continue to this day, are because of unreasonable perceptions about the respondent's actions since then as well as about the other acts about which he complained in his claim form but which we did not uphold.

Injury to feelings award

71 During the hearing, Ms Urquhart reminded the tribunal of comments made by Employment Judge A James at both the case management hearing in December 2019 and during the case management hearing on 11 June 2020, to the effect that the claimant's expectations in relation to the potential level of the injury to feelings award may not be realistic. Whilst Employment Judge A James recalls that comments to that effect were made, they were accompanied by a proviso to the effect that ultimately, the amount of any award would depend on the findings made by the employment tribunal, and the submissions made on the claimant's and respondent's behalf at the remedy hearing. We wish to record that in approaching the level of the injury to feelings award in this case, we have considered the matter afresh, and have not felt ourselves in any way bound by the previous comments.

72 Bearing in mind the above, we conclude that this is a lower band *Vento* case. The discrimination that occurred was time limited, and, in relation to the discrimination by Ms Akano, was conducted by a colleague at the same level in the organisation. The respondent took some immediate steps to protect the claimant from further harassment by Ms Akano, including management advice to her about her behaviour, and advising the claimant that he should leave the handovers to his colleague.

73 Following the further occurrence in April, Ms Akano was moved to a different shift, so the claimant would not need to interact with her at all. The fact that they subsequently attended the same training event was due to a mistake by the respondent, not any deliberate intent.

74 As for the race discrimination, the claimant said in his grievance that he was taken aback by this comment, not that he was upset by it. Further, it is not mentioned at all in his witness statement to the liability hearing.

75 The claimant remains in his job. He has an arrangement with the respondent regarding any public speaking which he does, which the claimant accepts has worked in the past and continues to work.

76 Mr Deakin is a manager and hence higher in the organisation's hierarchy than the claimant. However, the act of discrimination by Mr Deakin was limited in time; he was told by the HR officer to stop the line of questioning and he did so. Further, he put aside his own views about the online material and came to a fair and reasonable conclusion on the grievances. We refer to the relevant sections of the liability judgement, quoted above, to that effect.

77 For all of the above reasons, we conclude that this case is at the lower end of the scale in relation to discrimination claims.

78 We conclude that the appropriate level of the award for the acts taken as a whole is the middle of the lower band. We make an award of £5,000, plus interest. Taking a broad-brush approach to the interest, bearing in mind the dates of the various acts, we have calculated interest from 1 April 2019 to the date of our deliberations on 26 November 2020. That is 1 year and 240 days' worth of interest, to be added to the award, a sum of £663.01.

Aggravated damages

79 We conclude that this is not an appropriate case to award aggravated damages in addition to the injury to feelings award above. The discrimination by Ms Akano was by a colleague on the same level as the claimant. We of course accept that it was upsetting to him but it was not oppressive, wanton or reckless. The respondent took some steps to prevent a recurrence, it did not simply ignore the behaviour complained of.

80 As for Mr Deakin, as noted above, he is a manager, and we consider that in questioning the claimant about his online activities, he overstepped the mark. However, also as noted above, this was time-limited. The claimant immediately objected, HR intervened and that line of questioning was quickly ended. It had no effect on the grievance outcome, which was reasonable and non-discriminatory. That would not have been the likely outcome if Mr Deakin had a prejudicial motive or animosity towards the claimant, as alleged. Taking the grievance process as a whole, we reject the contention that it was high-handed and insulting.

81 We refer to and repeat our conclusions in relation to the alleged suppression/destruction of evidence; the press coverage; the actions taken by the organisation since the liability judgment, showing a willingness to learn the lessons; and the alleged lies/perjury by Ms Ives and Jon Deakin. We do not consider that Mr Deakin has been treated 'leniently'; or that there has been an attempt to silence and ruin the claimant.

82 Finally, we note Mr Diamond's argument that convention rights should be respected. We agree; but this claim concerns UK Equality law. Whilst that is of course affected by convention rights, it is also, in our view, consistent with those

rights, at least in this case. The fact that other convention rights are engaged is not in our view a basis for awarding aggravated damages, on these facts.

Exemplary damages

83 The respondent is not a servant of the government and therefore exemplary damages could not be awarded under this head. As for the argument that the actions of the respondent were designed to make a profit exceeding any compensation payable, we refer to our conclusions above. We refrain from repeating those arguments again here.

Stigma damages

84 We consider that the claimant's application for stigma damages is misconceived. Any stigma attaching to the claimant is not because of the discrimination found proven against the respondent but because of his own comments in relation to paedophiles – see for example, para 89 of the liability judgment, quoted above. In any event, a claimant in an application for stigma damages must prove loss. There is simply no evidence before us to prove that the claimant has suffered any financial loss, a point which Mr Diamond readily conceded.

Costs

85 The claimant claims 500 hours at £10.50 per hour. The costs application appears to be predicated on the basis that the claimant has won some of his claims. Cost do not normally 'follow the event' in employment tribunal claims. There is no basis for awarding costs against the respondent under the Employment Tribunal Rules of Procedure 2013 and Mr Diamond did not pursue that claim on the claimant's behalf at the hearing.

Recommendations

86 Finally, we refer to the request that we make recommendations. The recommendations requested by the claimant are set out at the end of Mr Diamond's skeleton argument. They include:

86.1 a letter of apology;

86.2 action by the CEO to read the judgment, identify the failings in policies and procedures, discuss what can be learnt from the claimant's experience and provide him with a further letter of apology;

86.3 introduce diversity awareness training in religious and philosophical beliefs in relation to sexual ethics;

86.4 consider the commencement of disciplinary proceedings against Mr Deakin;

86.5 subsequently, confirm to the tribunal that the recommendations have been carried out.

87 We do not consider it to be appropriate to make recommendations in this case. We conclude, on the basis of our findings of fact as set out above, that the respondent is willing to learn the lessons from it. We do not consider that recommendations are required in order to obviate or reduce the adverse effect on the claimant of any matter to which the proceedings relate. In the light of the claimant's request that senior managers be sacked, which we conclude is not appropriate or necessary, and his perceptions about what has happened since, we conclude that the recommendations sought would not obviate or reduce the adverse effects at all.

88 A meeting with the CEO has we understand taken place and we have little doubt that he has considered the judgment and the actions taken since have his blessing.

89 As for diversity awareness training on religious and philosophical belief, we note the training that is planned. In the light of the facts found, we conclude that the respondent takes its responsibilities seriously, and the suggested training is not necessary in addition.

Employment Judge A James
London Central Region

Dated …17 December 2020……

Sent to the parties on:

15/01/2021.

For the Tribunals Office

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