Case No: 1804312/2019 (V)

EMPLOYMENT TRIBUNALS

Claimant: **Mr M Keenan**

Respondent: **Department for Work and Pensions**

Heard at: **Leeds by CVP hybrid** **On: 19 February 2021**

Before: **Employment Judge Maidment**
Members: **Mr R Webb**
Mr G Corbett

Representation
Claimant: **In person**
Respondent: **Mr A Serr, Counsel**

RESERVED JUDGMENT

1. As compensation for victimisation the respondent is ordered to pay to the claimant as compensation for injury to feelings the sum of £4,000 together with an additional sum of £541.54 in respect of interest thereon.

2. The claimant's application for costs is refused.

REASONS

Issues

1. This remedy hearing resulted from the claimant's successful complaint of victimisation, heard on 8 and 9 September 2020 in respect of a reference sent by the respondent to a new employer of the claimant, WEA, dated 12 March 2018. The claimant has also made a costs application which was listed to be determined today.

Evidence

2. This hearing took place as a hybrid hearing with the claimant attending the Leeds Employment Tribunal. The tribunal panel and respondent's representative attended by CVP videoconferencing. This arrangement was made in view of the claimant's lack of access to appropriate equipment. During the course of the hearing the claimant expressed some dissatisfaction that it was not being recorded. The tribunal explained that it was not currently the practice within the Leeds Employment Tribunal for hearings conducted by CVP videoconferencing to be recorded.

3. The tribunal heard evidence from the claimant who confirmed, as his evidence, a typed "amended remedy submission" which included matters of evidence and submissions/legal argument. The tribunal had before it an agreed remedy bundle numbering some 146 pages and which included a transcript of his medical records. It became apparent during submissions that the claimant was referring to some documents contained only in the original liability hearing bundle. Whilst the Employment Judge had this with him, the tribunal's non-legal members did not. The members were appraised of those documents during the tribunal's deliberations.

4. The claimant included within his witness statement/remedy submission, reference to issues arising with a new employer, WEA. The claimant wished the tribunal to read this evidence, which he said had been prepared before he entered into a non-disclosure agreement with WEA. He said that it was reasonable to conclude that WEA's "unexplained acts" were due to the respondent's unfavourable reference. He had also disclosed documents relating to his employment with WEA which were in the agreed remedy bundle. Before the tribunal, the claimant's position was that the non-disclosure agreement prevented him from referring to the circumstances surrounding the termination of his employment with WEA. He would not answer any questions (at all) about his employment with WEA. The tribunal stated its view that he would not be in breach of that agreement, if required by a court of law to answer questions. The claimant was unwilling to accept that position and asked for the tribunal to set out in writing that he would have no liability towards WEA if he answered the respondent's questions. He proceeded, when asked any questions about his employment with WEA, to say that he could not comment due to him being bound by the non-disclosure agreement. He did not suggest that the tribunal could not or should not have regard to what he had said in his witness statement/submission or the documents he had disclosed, which in fact largely spoke for themselves in terms of the factual scenario of the claimant's employment dispute with WEA as set out below. The Tribunal also had before it public documents relating to Employment Tribunal claims he had brought against WEA.

Factual background and findings

5. The tribunal has been referred to the claimant having been successful in previous Employment Tribunal claims against the respondent. This included a complaint of unfair dismissal and a failure to make reasonable adjustments in a reserved Judgment and reasons sent to the parties on 16 March 2015. The claimant asserts that a finding was made in those proceedings that the respondent had lied to the tribunal. The tribunal has

been pointed to no such finding in the earlier tribunal's judgment and reasons.

6. Another tribunal Judgment of 3 March 2016 found that a form of reference then supplied by the respondent to the claimant dated 21 May 2015 was an act of victimisation. The situation which led to that Judgment also resulted in the claimant and the respondent coming to an agreement about the form of reference which would be issued in respect of him to any prospective employer in the future. This was known within the respondent as a "compromise agreement" form of reference. The claimant subsequently applied for employment positions on the basis that this agreed form of reference would be the one provided on a request of a prospective employer.

7. The claimant has not worked for the respondent since 24 July 2014. He applied for a position with WEA in early February 2018. He was successful at interview, having provided to WEA a copy of an agreed "compromise agreement" form of reference which the respondent had previously supplied to another employer of the claimant, subsequent to him leaving the respondent, Delta Academies Trust, dated 25 November 2016.

8. Nevertheless, WEA wanted a reference directly from the respondent and the respondent supplied the detrimental reference dated 12 March 2018 in response to its request.

9. WEA did not raise this form of reference with the claimant. His employment with WEA continued. The tribunal has made no finding that WEA read the detrimental reference or contacted the respondent to discuss it. It appreciates the claimant's position that WEA must have done, but there is no evidence to support that.

10. The claimant received the detrimental reference only on 3 April 2019 when he received, from WEA, documentation provided pursuant to a subject access request he made of WEA. The tribunal accepts the claimant's evidence that he did not notice straightaway that WEA had received a reference from the respondent which was not in the agreed form which the respondent was to provide to prospective employers. The tribunal accepts that the claimant's primary purpose in requesting documentation from WEA was in respect of an employment dispute he had with WEA unrelated to his offer of employment. He did not initially notice the form of reference provided by the respondent in the paperwork. He contacted the respondent on 10 May 2019 asking for copies of all employment references issued by the respondent from November 2016 and, on balance, it is unlikely that he would have waited this length of time to do so had he been aware of the detrimental reference a significant time before 10 May 2019. The tribunal notes also that the claimant told his doctor about the respondent's form of reference on 4 June 2018. He did not tell his doctor about it on his earlier doctor's appointment on 8 May 2019. It is more likely than not that, had he been aware of the reference at the time of his 8 May appointment, he would have told his GP.

11. As noted, the discovery of the reference caused the claimant to seek to ascertain from the respondent how this could have happened and to investigate what form of reference had been provided to other prospective employers in the interim, where the claimant's applications for employment had been unsuccessful.

12. The tribunal did not conclude that any other acts of victimisation had occurred in the provision or non-provision of a reference or its content to any other prospective employers. The claimant's belief was and remains nevertheless that he has suffered additional acts of victimisation.

13. There were inaccuracies and inconsistencies in the respondent's responses to the claimant's enquiries. The tribunal was unable to make a positive finding as to why the non-agreed form of reference was provided to WEA. The claimant had shown facts from which the tribunal could reasonably conclude there to have been victimisation, such as to shift the burden of proof to the respondent to show that the provision of the reference was in no sense whatsoever related to the claimant's protected acts. The respondent failed to discharge the burden, having called no witnesses to explain what had happened.

14. In terms of the respondent's conduct in this case, the tribunal has made no finding that the issuing of the reference to WEA was a malicious and orchestrated act. The tribunal did not know how a processor had failed to notice a number of prominent alerts on the system, where the compromise agreement form was logged as having been placed in the claimant's folder – hence the requirement of the respondent to provide a non-discriminatory explanation. However, just because the respondent's procedures provide in certain circumstances for the checking of references by a manager, does not mean that checking occurred here. It was the claimant's case that a manager of the respondent knew that an unfavourable reference was going out to WEA and was happy to allow that to happen. That was not a finding the tribunal could make. The claimant submits that the tribunal's earlier Judgment proves that the respondent was guilty of deliberate, malicious and discriminatory victimisation of him and that the respondent has lied to the tribunal to cover up repeated acts of discrimination. He has pointed to paragraphs of the tribunal's Judgment and evidence before the tribunal at the liability stage in support of that contention. The tribunal has reminded itself of those findings. It notes that in fact the claimant has drawn his own inferences from some of the tribunal's conclusions to support his argument and is in effect seeking the tribunal to reconsider its liability Judgment. A failure to act, even if not explained to the tribunal's satisfaction, does not however necessarily equate to a deliberate, malicious or dishonest action. Where an email disclosed appears to be incomplete (with a signature missing), the tribunal cannot simply (and without having any evidence of any text omitted) come to a conclusion that a section has been omitted which shows malicious intent and dishonesty.

15. The respondent did incorrectly communicate to the claimant on 17 May 2019 that no references had been sent in respect of the claimant from November 2016 and provided inconsistent explanations as to what had

happened. Wider allegations made by the claimant of a conspiracy were not, however, supported by the tribunal's findings.

16. At the time the claimant discovered the detrimental reference then, he was still employed by WEA. However, from January 2019 he had been suspended for, the claimant alleged, his having made a protected disclosure in January 2019 relating to the heating. The claimant continued in employment with WEA, albeit he was absent due to ill-health, until he resigned on 9 December 2019.

17. The tribunal has no evidence of any connection between the difficulties the claimant experienced with WEA and the detrimental reference. It has only the claimant's assertion that WEA's acts were "unexplained".

18. The tribunal would note the timeline as follows.

19. The claimant had been prescribed the anti-depressant, citalopram, on 30 November 2012 with a diagnosis of a depressive disorder. He was then prescribed this medication on a continuing basis up to June 2016.

20. The claimant received his offer of employment with WEA by letter of 5 February 2018 with a start date of 12 February. As already referred to, the detrimental reference was (unbeknown to the claimant at the time) sent from the respondent to WEA dated 12 March 2018. The claimant's employment with WEA continued.

21. The claimant submitted for consideration in the agreed bundle of documents a letter of 1 October 2019 from Krystyna Petersen, an HR consultant engaged by WEA to consider an appeal he had lodged. This referred to an appeal hearing having taken place on 5 September, following an appeal raised on 29 July against a decision at a grievance hearing on 11 June 2019 rejecting the claimant's grievances. The letter records that the claimant had raised a complaint about the heating at his place of work which was to be investigated. A Judgment of Employment Judge Wade on 30 August 2020 referred to the claimant first bringing a tribunal complaint on 12 March 2019 in which he complained that an 8 week period of suspension from January 2019 was a detriment on the grounds of his having made a protected disclosure.

22. The claimant's suspension followed (in time at least) allegations made against the claimant of sexual harassment.

23. The claimant then submitted a further grievance to WEA - there is reference in the appeal decision to the claimant raising 9 complaints/grievances between 27 January and 10 June 2019. A grievance meeting had been set for 18 February until, on 17 February, the claimant raised a further grievance.

24. On 12 March the claimant brought a tribunal complaint against WEA.

25. He made a subject access request and received WEA's response on 3 April 2019, which included the respondent's detrimental reference. As found, he did not notice this until sometime later, on or shortly before 10 May 2019.

26. Details of the allegations against the claimant were provided to him by WEA on 12 April 2019. An investigation meeting was scheduled for 17 April, which the claimant did not attend.

27. The claimant attended a preliminary hearing in his tribunal complaint against WEA on 3 May 2019. This resulted in a deposit order which was not met by the claimant.

28. The claimant saw his GP on 8 May 2019. This produced a diagnosis of a stress-related problem with a discussion of medication or counselling which the claimant was not keen on. The claimant was recorded as going through stress at work [with WEA] since January 2019. He referred to the problem with the heating and that he was suspended due to a harassment investigation. He referred to recently going through the tribunal, that the harassment allegations had been withdrawn and that WEA wanted him to go back to work without explanation. He said that he had put in a grievance against them. He referred to being able to sleep, but having a lack of motivation and concentration.

29. Again, the claimant said (and it is accepted) that he had identified the detrimental reference after this appointment – on or shortly before 10 May 2019.

30. He next returned to his GP on 4 June 2019. The claimant told the tribunal that this was a pre-arranged review rather than an appointment he specifically requested. He explained to his doctor that his tribunal hearing with WEA was going to be in September, but that his manager still hadn't disclosed the witness statements about him. He also referred to coming to know that the respondent had sent the wrong reference letter saying that he had been dismissed previously due to inadequate attendance which was not in line with the agreed form of reference. He said that he was also going to take the respondent to the tribunal and voiced concern that his future career would be affected. He said that he had a solicitor to deal with this and said he "is feeling more anxious and stressed due to all these". There was a diagnosis of "anxiety state" and the claimant was prescribed citalopram with a review to take place in 8 weeks. The claimant's position before the tribunal was that the state of his health was due to the respondent's reference. The claimant has taken citalopram on an ongoing basis since then.

31. The claimant's whistleblowing detriment complaint against WEA was struck out by a Judgment of 7 June 2019.

32. The claimant attended his grievance hearing with WEA on 11 June.

33. The claimant saw his doctor again on 25 July when he described himself as "a bit more relaxed, but not much benefit from citalopram yet… Internal investigation going on at work, not heard anything more yet, also thinking of

look for diff job – feels trust is gone, also might start part-time first when returns."

34. The claimant appealed against the grievance decision on 29 July 2019 with the appeal decision issued on 1 October 2019. This acknowledged some shortcomings in terms of process. However, the material points of the appeal were not upheld.

35. The claimant returned to his doctor on 14 October 2019 when he mentioned the possibility of resigning from WEA's employment and claiming constructive dismissal. He also referred to having had his first tribunal hearing in respect of the current proceedings against the respondent saying: "mood and stress level up and down".

36. It is clear from the aforementioned Judgment of Employment Judge Wade, that the claimant resigned from his employment with WEA on 9 December 2019. He then submitted a further employment tribunal complaint against WEA on 12 February 2020. This included a complaint of unfair dismissal which was struck out by Employment Judge Wade. A complaint proceeded in respect of breach of contract. Ultimately a non-disclosure agreement was reached with the claimant on 17 December 2020. The claimant's viewpoint, as expressed to the tribunal, was that this was a success.

Remedies sought

37. In terms of the remedy sought by the claimant, the first option he gave was to be reinstated by the respondent and then transferred to another civil service department. To cover his losses in the interim period, he sought a payment of compensation in the sum of £135,000 and the crediting of his pension account with additional service/contributions.

38. His second option involved financial compensation only. In that regard he sought an award of injury to feelings of £55,000 based on continuing malicious and dishonest discrimination and victimisation over an 8 year period, aggravated damages of £22,000 on the basis of the respondent's malicious and dishonest lies and an additional sum of £50,000 by way of exemplary damages. In addition, he sought past and future loss of earnings in the sum of £560,000 and compensation for loss of pension of £247,500. He asked the tribunal to make a financial penalty of £20,000 against the respondent.

39. The claimant also asked the tribunal to make recommendations. These included the provision of an apology recognising unlawful and dishonest treatment over an 8 year period, that the employment tribunal Judgment in this and preceding cases are read and reflected upon with the opportunity of the claimant to attend a meeting with senior managers, the respondent approach the EHRC for assistance in reviewing awareness training with a view to providing effective training, the respondent identify the manager "who approved the WEA reference" and that the respondent confirm that each of those recommendations has been complied with within a specified timescale.

Applicable law

40. Awards of compensation in claims of discrimination are governed by section 124 of the Equality Act 2010 which gives to the Tribunal the same power to grant any remedy which could be granted in proceedings in tort before the civil courts. Compensation based on tortious principles aims to put the Claimant, so far as possible, into the position that she would have been in had the discrimination not occurred - see **Ministry of Defence v Cannock** above – essentially a "but for" test in causation when assessing damages flowing from discriminatory acts.

41. As regards injury to feelings arising out of the detriment as found to be proven, according to **Prison Service and others v Johnson [1997] ICR 275** the purpose of an award for injury to feelings is to compensate the claimant for injuries suffered as a result of the discriminatory treatment, not to punish the wrongdoer. In accordance with **Ministry of Defence v Cannock [1994] ICR 918** the aim is to award a sum that, in so far as money can do so, puts the claimant in the position he or she would have been had the discrimination not taken place. Pursuant to **Corus Hotels Plc v Woodward [2006] UK EAT/0536/05**, an Employment Tribunal should not allow its feelings of indignation at the employer's conduct to inflate the award made in favour of the claimant.

42. The Tribunal was referred to the Vento guidelines (derived from **Vento v Chief Constable of West Yorkshire 2003 ICR 318**) and to the guidance given in that case where reference was made to three bands of awards. Sums within the top band should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory treatment. The middle band was to be used for serious cases which did not merit an award in the highest band. Awards in the lower band were appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence. Nevertheless, the tribunal considers that the decisive factor is the effect of the unlawful discrimination on the claimant.

43. The bands originally set out in **Vento** have increased in their value due to inflation and, a further uplift of 10% given to general damages pursuant to the case of **Simmons v Castle [2012] EWCA Civ 1039**. This had given rise to Presidential Guidance which re-drew the middle band for claims brought on or after 11 September 2017. That Guidance has since been revised and the sums uprated in respect of later claims. The Tribunal should apply the bands in the Presidential Guidance dated 25 March 2019 applying to claims presented on or after 6 April 2019. This gives a lower band of £900 - £8800, a middle band of £8,800 - £26,300 and a top band from £26,300 - £44,000.

44. In the context of the potential to make an award for aggravated damages, the Tribunal refers, for the principles to be applied, to the decision of Underhill J in **Commissioner of Police of the Metropolis v Shaw [2012] ICR 464**.

45. Aggravated damages are not ordinary damages for injury to feelings in consequence of discriminatory acts – that would be mere duplication. They may be awarded in appropriate cases in respect of the manner in which the wrong was committed. In this regard a Tribunal might be looking to see whether there has been behaviour of *"a high-handed, malicious, insulting or oppressive manner"*. Secondly the motive for the conduct of the employer may be relevant, if the employee was aware of it, in circumstances where spiteful, vindictive or deliberately wounding conduct is considered likely to cause more distress than conduct which results from ignorance or insensitivity. Under both these heads this Tribunal is mindful of the need to avoid duplication if indeed such factors are already compensated for within the award of injury to feelings.

46. The third head under which aggravated damages may be available is where an award is warranted by the Respondent's subsequent conduct after the discriminatory action. For instance, an award may be appropriate in the case of an employer who has deliberately refused to investigate a clear complaint of discrimination, failed to apologise when discrimination was patent or used its superior power and status to cause further distress. Conduct in the course of litigation may aggravate injury in a manner which can properly result in compensation, albeit respondents are allowed to defend themselves and an adversarial approach to a claimant's evidence is not in itself a ground for an aggravated award.

47. Exemplary damages are damages that are aimed at punishing the wrongdoer not compensating the victim. They can be justified where there is conduct of servants of Government that is oppressive, arbitrary or unconstitutional, conduct of the respondent designed to be self-profiting or where such damages specifically authorised by statute.

48. An employment tribunal may make "a recommendation that within a specified period the respondent takes specified steps the purposes of obviating or reducing the adverse effect on the complainant of any matter to which the proceedings relate" (see Section 124(3) of the Equality Act 2010.

49. Section 12 of the Employment Tribunals Act 1996 gives to employment tribunals a discretionary power to impose a fine on an employer found to have breached a claimant's employment rights where the tribunal considers that the breach had "one or more aggravating features." What may be an "aggravating feature" is not defined, but clearly is more likely where an employer's action was deliberate or committed with malice, in the context of a sophisticated employer or where the employer had repeatedly breached the employment right concerned.

50. The Tribunal has the power to make an award of costs by virtue of Rules 76 of the Employment Tribunals Rules of Procedure 2013, which provide, so far as material, as follows:

> *"76 When a costs order or a preparation time order may or shall be made*

> *A Tribunal may make a costs order …, and shall consider whether to do so, where it considers that –*
>
> 1. *a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or*
> 2. *any claim or response had no reasonable prospect of success….."*

51. The Tribunal must identify the unreasonable conduct, say what was unreasonable about it and say what its effect was: see ***Yerrakalva v Barnsley MBC*** **[2012] ICR 420 CA**.

Conclusions

52. There cannot in the circumstances be any award of compensation in respect of any financial losses. There was no financial loss flowing from the issuing to WEA of the detrimental reference. The provision of that reference did not result in WEA's termination of his employment. There is no evidence that WEA had any regard or even read that reference. The claimant has been unable to show a causal link between the detrimental reference the issues the claimant subsequently had in his employment by WEA which led to him resigning and claiming to have been constructively dismissed.

53. There ought, however, to be an award in respect of injury to feelings. Mr Serr suggested a figure at the bottom of the lower Vento band, £1,000. The tribunal after consideration has concluded an award of £4,000 to be appropriate. The tribunal is here compensating the claimant for a single act in terms of the provision of the reference to WEA. The claimant has brought prior successful complaints of discrimination/victimisation and has been compensated for the treatment of him. The tribunal cannot compensate him again for those acts or seek to re-evaluate previous compensation awarded in the light of subsequent acts.

54. The claimant, the tribunal accepts, was upset to learn of the detrimental reference. The tribunal accepts that it did have a detrimental effect on his health. He had continuing anxiety that if he applied for future jobs an unfavourable reference would be issued. However, he was already suffering from stress and anxiety due to the treatment he believed he was suffering from at the hands of WEA. Indeed, the detrimental reference added to his concerns, but he was already in the middle of a very significant employment dispute with WEA involving his own grievances and complaints made against him of sexual harassment. They were the issues with immediate impact on him. Employment tribunal proceedings had already been commenced and were, by May 2019, not going as well as the claimant would have hoped, a deposit order having been made, and the claimant was unfit to attend work due to his state of health. In all the circumstances the detrimental reference from the respondent cannot be said to have been the issue of the most significant impact on his state of mental health. It had a significant impact sense of it being certainly more than trivial, but the

tribunal cannot consider it to have been the principal reason for the claimant's poor health which pre-existed his discovery of the detrimental reference. Indeed, the discovery of the detrimental reference caused the claimant to conclude (which added to his upset) that he had lost out on previous job opportunities by reason of unfavourable references having been provided by the respondent. He sought to make enquiries about prior references and has pursued such complaint in these employment tribunal proceedings which have not been found to be acts of victimisation.

55. The tribunal notes that, after the detrimental reference was discovered, the claimant was for the first time for a while prescribed with citalopram, an antidepressant. The tribunal has accepted the claimant's evidence that he discovered the detrimental reference on or shortly before 10 May 2020. This discovery did not, however, result in an evidenced downturn in his health to the extent that he had to see his doctor as a consequence. When he visited his doctor in June that was a prearranged review appointment at which he updated the doctor regarding his ongoing issues with WEA, which were still affecting him and mentioned also now his concerns arising out of the detrimental reference.

56. The tribunal, on the basis of the evidence before it, might have considered an award in respect of injury to feelings of around £2500 to be appropriate. However, it then considered that there were aggravating features in this case which justified the greater award of £4000.

57. In particular, the tribunal has regard to the fact that the claimant had already brought a successful complaint of victimisation in respect of a detrimental reference arising out of which the respondent had agreed to provide a particular compromise agreement form of reference on any further enquiry of a prospective employer. Despite this, the claimant suffered the detriment of a reference not in the agreed form being provided to WEA. Further, when the claimant enquired about other references which the respondent might have provided to prospective employers he received an inaccurate response and then inconsistent explanations as to how WEA might have been provided with a reference which did not match that which he had agreed. The award of £4000 represents an uplifted award in respect of injury to feelings to reflect the aggravating features.

58. Interest is payable in respect of this award which over a period of 88 weeks up to this remedy hearing and at a rate of interest of 8% gives a further sum payable to the claimant of £541.54.

59. No additional claim is made in respect of damages for personal injury and the tribunal has no medical evidence before it upon which such a claim could be based beyond the award of injury to feelings.

60. There is no basis for award of exemplary damages or for the making of a financial penalty. The tribunal has not made findings in respect of the respondent's conduct which justify such awards or penalties. This was not the first receipt by the claimant of a detrimental reference, but the factual scenarios in each case are of material difference.

61. The tribunal on balance declines to make a recommendation. Some of the claimant's requests are dependent upon the recognition of dishonesty on the respondent's part, which again is not reflected in the tribunal's findings. It appears to the tribunal that a system is in place to ensure the provision to any prospective employer of the claimant of the compromise agreement form of reference. Obviously, that system has failed in the past, but the respondent in its internal investigations recognised that the failure had occurred and instructions were given within the third party organisation responsible for generating the references to hopefully ensure that there is no re-occurrence. Without understanding more regarding the mechanics of the generation of a reference, the tribunal is unable to make specific recommendations as to any further steps which ought to be taken. The tribunal has been told by the parties that there is now an understanding that the claimant will not have to give specific consent before a reference is provided to a prospective employer. It is clear that the respondent has and might easily in the future make changes to how the provision of references is outsourced. It appears that in between the two sets of proceedings which have dealt with the issue of references, the service provision responsible for references has been moved offshore. Nor did appear to the tribunal to be helpful to recommend the specific involvement of particular managers in circumstances where personnel and lines of authority will inevitably change from time to time and the same individual will not always be available to deal with any issue arising out of the provision of a reference.

62. Finally, the tribunal considers the claimant's application for costs in which he claims preparation time in respect of 120 hours of time taken to prepare and pursue his complaint. This is based on the claimant's submissions on the respondent's vexatious, malicious and dishonest defence of the proceedings. The tribunal has, however, not made any findings which would enable it to characterise the respondent's defence in such a manner. The respondent acted reasonably in seeking to defend the allegations brought and it could not be said that it did so without any reasonable prospect of success. An inaccurate statement in the response to the claimant's claim about a reference which was not one of those complained of, does not lead to a contrary conclusion. The claimant's contention that this evidenced deliberate concealment of the existence of a compromise agreement reference on his file was not accepted. The majority of the claimant's individual complaints in these proceedings did not succeed. The respondent certainly hampered itself at the final hearing by not calling any witness evidence, but again it was able to successfully defend a number of the claimant's complaints on the basis that there was no shifting of the burden of proof. The tribunal does not consider that the circumstances of this case cross the threshold necessary for consideration to be given to an award of costs.

Employment Judge Maidment

Date 8 March 2021

Public access to employment tribunal decisions
Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.