THE EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
D	**v**	**(1) Defence International Limited (London)** **(2) Defence International Limited (Ottawa)** **(3) Mr Edward Banayoti**

Heard at: London Central **On**: 16 and 17 March 2021

Before: Employment Judge Glennie

Representation:
Claimant: Mr C Milsom (Counsel)
Respondents: Mr E Banayoti (briefly on 17 March only)

JUDGMENT ON REMEDIES AND COSTS

The judgment of the Tribunal is as follows:

1. **The First, Second and Third Respondents are ordered to pay compensation and interest to the Claimant in respect of her complaints under the Equality Act of £122,788.32, calculated as follows:**

1.1	**Compensation**	**£104,782.55**
1.2	**Interest**	**£ 14,416.25**
1.3	**Allowance for grossing up**	**£ 3,589.82**

2. **The First and Second Respondents are ordered to pay compensation to the Claimant in respect of her complaint of breach of contract of £12,479.11.**

3. **The First, Second and Third Respondents are ordered to pay the following to the Claimant in respect of costs:**

   3.1 Under Rule 78(1)(a), the sum of £20,000; and

3.2 Under Rule 78(1)(b), her costs of the claim exceeding £20,000, to be determined by way of a detailed assessment carried out by an Employment Judge.

4. The liabilities in orders 1 and 3 above are joint and several as between the First, Second and Third Respondents. The liability in order 2 above is joint and several as between the First and Second Respondents.

5. The parties may apply to the Tribunal within 28 days of this judgment being sent to them as to any matters of calculation, and/or as to the issue of grossing up.

REASONS

1. By a judgment sent to the parties on 25 November 2019 I found in the Claimant's favour on the following complaints:

   1.1 Sexual harassment / harassment related to sex.
   1.2 Direct discrimination because of sex.
   1.3 Victimisation.
   1.4 Breach of contract.

2. My findings about the facts of the complaints may be found in the reasons that I gave in respect of that judgment.

3. This hearing was listed in order to determine remedies, and to determine the Claimant's application for costs.

Procedural matters regarding this hearing

4. It will be necessary to refer to the wider procedural history in relation to certain issues on remedies, and in relation to the costs application. There were, in addition, certain procedural matters affecting the present hearing which I should record.

5. On 27 November 2020 I heard and rejected the Respondents' application for reconsideration of the liability judgment. I did not at that stage decide the question of the extent to which the Respondents should be permitted to participate in the remedy hearing, reserving this to be determined in the light of the circumstances applying at the time of that hearing. I made an order for the Respondents to produce any evidence on which they wished to rely in relation to remedy by 29 January 2021. The Third Respondent sent a statement dated 22 December 2020 at pages 499L-N, in which he effectively challenged the decision on liability and commented on the Claimant's credibility. (The Respondents had appealed against the liability judgment, the last surviving element of which appeal was finally dismissed on 2 February 2021).

6. The present hearing was listed for 2 days over 16-17 March 2021. I was required to deal with another matter on the morning of 16 March, and I directed that the hearing would commence at 2.00 pm, with CVP joining instructions being sent to the parties accordingly.

7. The Third Respondent sent an email to the Tribunal at 12.35 on 16 March stating that the instructions did not include local "dealing" (I assume dialling) from Canada, and that the link did not work.

8. There was no attendance at 2.00 pm on behalf of the Respondents. The Claimant and Mr Milsom were present. I stated that I would read the relevant documents during the afternoon and commence the hearing at 10.00 am on 17 March, and I caused an email to be sent to the parties confirming this.

9. At 10.00 am on 17 March I was unable to connect to the internet and at 11.25 am I commenced the hearing by telephone, with a view to deciding in the first instance whether to proceed in the Respondents' absence. I heard submissions on that point from Mr Milsom and decided that I would hear the case in the absence of the Respondents, commencing at 12.30.

10. In the event, the Third Respondent was present (by audio only) when the hearing resumed by CVP at 12.30. He stated that he asked to be excused from the hearing as he had a medical appointment, and that he wished to rely on a document dated 16 March 2021 and headed "Witness statement by the Respondents", which he stated contained his final thoughts. The Third Respondent did not ask for a postponement of the hearing and I continued with it, on the basis that the document of 16 March contained the submissions that the Respondents wished to advance.

11. The Claimant's advisers had prepared a bundle of documents for use in this hearing, and page numbers that follow in these reasons refer to that bundle.

12. I heard evidence from the Claimant. She confirmed the contents of her 5 witness statements to date, and answered questions from me. In answer to me, the Claimant said that the Respondents told her that there would be a 6-month trial period in the job, and that it would then become permanent. She said that the Third Respondent told her that she should be ok in the job as he was confident of her credentials and qualifications.

13. The Claimant also said that, following her dismissal, it was some time before she got back on her feet. She had found that, when applying for jobs, she was receiving rejections without explanation or was being told that she was over-qualified; and that if she omitted reference to her PhD, she was told that there was a gap in her CV.

14. I noted that the Respondents' witness statement was headed with the Claimant's name, in spite of the anonymity order that applies to her in these

proceedings. The statement contended that the claims were false, made complaints about the Claimant's lawyers, and stated that the Respondents were now without lawyers as they could not continue to pay for them. It continued that the Third Respondent had suffered reputational damage as a result of the claim.

15. With regard to remedy issues, the Respondents' statement made the following points:

15.1 The Claimant was not working before or after her employment with the Respondents, other than as an escort.

15.2 The Claimant did not do any work for the Respondents and so (by implication) should not recover any salary.

15.3 There was a claim for the cost of shipping the Claimant's possessions, but to where?

15.4 There was a claim for rent and a deposit, did she get the deposit back?

Remedies

16. Mr Milsom referred to the Schedule of loss at pages 680-682 and sought the following by way of compensation.

16.2 In respect of the Equality Act claims:

16.2.1 Loss of earnings for the period 1 September 2018 to 17 October 2019.

16.2.2 Injury to feelings.

16.2.3 Aggravated damages.

16.2.4 Interest.

16.3 In respect of the breach of contract claim, relocation costs and expenses of £11,865.02.

16.4 In respect of both, an uplift of 25% for filing to observe the ACAS Code of Practice

Equality Act claims

17. The basic measure of compensation for discrimination is that which will put the Claimant in the position she would have been in but for the discrimination: **Ministry of Defence v Cannock [1994] ICR 918.**

18. There are considerations which may lead to a reduction in compensation. One is a failure to mitigate, where the burden is on the Respondent to prove that there has been such a failure: **Cooper Contracting v Lindsey UKEAT/01854/15**. In **Chagger v Abbey National PLC [2009] EWCA Civ 1202** the Court of Appeal held that, where there is some prospect that a a non-discriminatory course of events would have led to the same outcome, the compensation should be reduced accordingly, although the Tribunal should not engage in excessive speculation in this regard.

19. The claim for loss of earnings was based on the annual salary of 90,000 Canadian dollars applicable to the Claimant's employment. The claim was limited to the period from the commencement of the employment (1 September 2018) to the liability hearing (15 October 2019). Mr Milsom explained that this was proposed as a pragmatic way of ensuring that there was no risk of over-compensating the Claimant.

20. I could see merit in this approach. It would be unrealistic to treat this as a case giving rise to a lifetime's or long term loss of employment prospects, and the Tribunal would have to make some finding as to the point beyond which loss of earnings could not be attributed to the discrimination. There was, however, no evidence to support any failure to mitigate on the Claimant's part: I have already referred to her evidence about her attempts to find alternative employment. Nor was there any particular factor that would suggest a reduction should be made in accordance with **Chagger**: I find that this employment was no more or less likely than any other to end at any particular point, in the absence of discrimination. I did not find the 6-month trial period to be of particular significance: the Claimant might, or might not have passed that in the absence of discrimination. There was no evidence to suggest any particular risk that she would not.

21. I concluded that the approach advocated by Mr Milsom, if anything, tended to err in favour of the Respondents. I therefore adopted it and awarded loss of earnings for the suggested period, less the sums actually received.

22. The figures are shown in the schedule of loss. The schedule suggests that gross figures should be used as the Claimant's salary would have been paid to her overseas. I do not understand this to mean that the Claimant would not have been liable to pay any income tax in any jurisdiction. As the salary was expressed in Canadian dollars, it may be inferred that the payment was to be made in Canada: but I have no evidence of what the applicable tax regime would have been.

23. In other circumstances, a Tribunal might call for further submissions on this point. I am anxious, however, to avoid any further delay in bringing this matter to a conclusion. I have therefore taken the pragmatic approach of applying UK income tax to the gross figures given.

24. The Claimant's gross salary over the period would have been £57,921.05, spread over 2 tax years (2018/19 and 2019/20). In the first of these years, 1 September 2018 to 4 April 2019, there would be 35 weeks at a gross rate

of £990.10, so £990.10 x 35 = £34,653.50. The balance in the next tax year would be: £57,921.05 - £34,653.50 = £23,267.50.

25. In 2018/19 the Claimant would have paid no income tax on £12,500 and 20% on £22,153.50 (so, tax of £4,430.70). She would have paid no NI contributions on £9,500 and 12% on £25,153.50 (so, NI of £3,018.42). The net figure for 2018/19 would therefore have been £34,653.50 - £4,430.70 - £3,018.42 = £27,204.38.

26. In 2019/20 the gross salary would have been £23,267.50. The Claimant would have paid no income tax on £12,500 and 20% on the balance of £10,767.50, giving £2,153.50. There would have been no NI on £9,500 and 12% on £13,767.50, giving £1,652.10. The net figure for 2019/20 would therefore have been £23,267.50 - £2,153.50 - £1,652.10 = £19,461.90.

27. The total net loss of earnings is therefore £27,204.38 + £19,461.90 = £46,666.28. From this there has to be deducted by way of mitigation the total sum earned over the period (£3,840.00) on which there was no tax or NI liability. The final total is therefore £42,826.28.

28. Awards for injury to feelings are assessed by reference to the **Vento** guidelines. I first considered which bracket was appropriate. The Claimant's employment was short-lived, so this was not a case of discriminatory conduct continuing over a period of years. There was, however, significant verbal harassment, the Claimant was not paid during her employment, and she was dismissed because she rejected the Third Respondent's advances. She gave up her home on the basis that she would be provided in connection with her job, resulting in her not having a permanent home following her dismissal.

29. In her fifth witness statement the Claimant stated that she felt belittled by and ashamed of her experience with the Respondents, and that she had lost confidence and felt less able to trust others. In her third witness statement the Claimant described herself as feeling crushed, devastated and homeless, and that at times she felt suicidal. I accept that evidence, as it seems to me to be plausible that she would experience such feelings. The Claimant also stated that the Respondents' conduct left her feeling depressed: her she was referring as much to the conduct of the proceedings (on which I shall comment below) as to the original discriminatory actions. I accept this evidence also.

30. I first considered which **Vento** band was appropriate. I find that the seriousness of the consequences for the Claimant of the discrimination means that this is a higher band case, although in the lower half of that bracket. The current range of awards within the higher bracket is £27,000 to £45,000, plus an uplift of 10% in accordance with **De Souza v Vinci Construction [2017] IRLR 844**. I find that the appropriate award is £30,000, uplifted by 10% to £33,000.

31. Underhill P addressed the situations in which an award of aggravated damages might be made in Tribunal proceedings in **Commissioner of Police of the Metropolis v Shaw [2012] ICR 464**. These were:

    27.1 Where the manner in which the wrong was committed was particularly upsetting.

    27.2 Where there was a discriminatory motive.

    27.3 Where subsequent conduct – such as conducting Tribunal proceedings in an unnecessarily offensive manner – adds to the injury.

32. I find all three of these to be present in this case. It was particularly upsetting for the Claimant to be subjected to sexual advances from the Third Respondent and, when she rejected them, to be dismissed – and dismissed at a time when she had committed herself to the job by giving up her private accommodation. There was a discriminatory motive, in that the Third Respondent's intention in dismissing the Claimant was to effect a form of retaliation for her rejection of his advances.

33. The Respondents have also, I find, conducted the Tribunal proceedings in an unnecessarily offensive manner. Some of this offensive conduct has been directly aimed at the Claimant. The Third Respondent has repeatedly referred to the Claimant's apparent activities as an escort – most recently in his witness statement of 16 March 2021, headed as I have observed with the Claimant's name – without showing how these may be relevant to the issues to be decided. He also said that he wanted to warn other men about what he described as "the Claimant's traps". Some of the offensive conduct has been directed at the Claimant's lawyers. In the 16 March witness statement, the Third Respondent accused them of unprofessionally and unethically rushing the case through, without giving him a chance to defend himself.

34. There is also a wider sense in which the Respondents' conduct of the litigation merits criticism and has added insult to injury. For the earlier procedural history I refer to my judgment striking out the response, and to my judgment on the Respondents' reconsideration application, sent to the parties on 29 December 2020. The more recent procedural events are described above.

35. I find that, far from the Claimant's lawyers being guilty of trying to rush the case through, the Respondents have sought to obstruct and delay its progress throughout. It would be disproportionate to repeat the procedural history, which I have described elsewhere at the different stages of the litigation. The Respondents have scarcely ever complied with the Tribunal's case management orders, and have done very little to engage with the issues in the case. Instead, the Third Respondent has erratically taken part in hearings; has sought postponement without producing the evidence necessary to support the application; and has sought a

reconsideration, again without providing the necessary medical evidence to support the main ground for that. In the present hearing, he produced what I find to be an unhelpful and inflammatory witness statement, and departed from the hearing.

36. I have reminded myself that an award of aggravated damages is intended to compensate the recipient, not to punish the wrongdoer. I find that the Respondents' conduct of the litigation, through the Third Respondent, must have added and did add considerably to the distress that she has suffered. I have already allowed for some of this in the award for injury to feelings, and I am aware of the need to avoid double recovery for the same loss. With that in mind, I award aggravated damages of £8,000.

37. Section 207A(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 provides that:

If, in any proceedings to which this section applies, it appears to the Employment Tribunal that –
(a) The claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,
(b) The employer has failed to comply with that Code in relation to that matter, and
(c) The failure was unreasonable,
the Employment Tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25 per cent.

38. I accept Mr Milsom's submission that the ACAS Code of Practice 1 (Disciplinary and grievance procedures) applied to the protected act constituted by the solicitors' letter of 11 October 2018. It is established that a protected disclosure may fall within the grievance provisions of the Code (**Ikejiaku v British Institute of Technology UKEAT/0243/19**) and I agree that in principle the position should be the same with regard to a protected act within section 27 of the Equality Act.

39. The Respondents took no steps under the Code and took a confrontational approach from the outset. There was no attempt to hold a meeting with the Claimant, or to decide on appropriate action: there was a denial of the complaints against the Third Respondent and assertions that the Claimant was never employed and that the Tribunal did not have territorial jurisdiction.

40. I have asked myself whether it is relevant for the present purpose that the Code only applies to one legal complaint under the Equality Act, i.e. the complaint under section 27. I find that it is not, because the solicitors' letter referred to all of the matters which have become the subject of these proceedings.

41. Taking all of these matters into account, I find that the failure to comply with the Code was unreasonable, and that it would be just and equitable to apply an uplift of 25%.

42. The total compensation, before grossing up, under the Equality Act complaints is therefore as follows:

Loss of earnings	42,826.28
Injury to feelings	33,000.00
Aggravated damages	8,000.00
Sub total	83,826.28
25% uplift	20,956.57
Total	104,782.85

43. Interest on compensation for discrimination is governed by the Employment Tribunals (Interest on awards in discrimination cases) Regulations 1996. In summary:

43.1 The Tribunal may include interest on the sums awarded, and shall consider whether to do so, without the need of an application (regulation 2).

43.2 The current rate of interest is 8%.

43.3 Interest on injury to feelings runs from the date of the act of discrimination to the day of calculation, the latter meaning the day on which the amount of interest is calculated by the Tribunal (regulations 6(1)(a) and 4(1)).

43.4 In the case of all other awards of compensation, interest runs from the mid-point date to the day of calculation (regulation 6(1)(b)). The mid point date is the day half way through the period from the date of the at of discrimination to day of calculation (regulation 4(2)).

43.5 Regulation 6(3) provides:

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

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

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

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

44. In the present case, the acts of discrimination occurred over a period between 15 August and 23 October 2018, with the majority of them occurring from mid-September onwards. I have taken the date of the act as 25 September 2018, in an effort to reflect the occurrence of the various ats, and because it was then that the Third Respondent ceased communicating with the Claimant.

45. I have taken the calculation day as the second day of the present hearing, i.e. 17 March 2021. The mid-point date between 25 September 2018 and 17 March 2021 is 20 December 2019. The period from 25 September 2018 to 17 March 2021 is 2 years and 173 days; and from 20 December 2019 to 17 March 2021, 1 year and 87 days.

46. Calculating interest in full would give the following:

    Loss of earnings, 42,826.28 x 125% for ACAS uplift = 53,532.85 x 8% x 1 year 87 days = 9.9% = 5,299.75.

    Injury to feelings, 33,000.00 x 125% for ACAS uplift = 41,250 x 8% x 2 years 173 days = 19.7% = 8,126.50.

    Aggravated damages, 8,000.00 x 125% for ACAS uplift = 10,000.00 x 8% x 1 year 87 days = 9.9% = 990.

47. The total amount for interest would therefore be £14,416.25.

48. In accordance with regulation 6(3), I have considered whether such an award would give rise to serious injustice. I do not consider that it would. The delays in the case have largely (although not exclusively) been caused by the Respondents. The rate of 8% greatly exceeds any currently available rate of interest on cash deposits; but in the present case, the mid-point date falls after the end of the period for which financial losses have been claimed and awarded.

49. No detailed submissions were made on grossing up. I find that this should be applied to the loss of earnings in excess of £30,000, and so to the sum of £12,826.28, and to the element of uplift on that (25% of £12,826.28 = £3,206.57). I also find that it should be applied to the award of interest, being £14,416.25. The total to be grossed up is therefore: £12,826.28 + £3,206.57 + £14,416.50 = £30,449.10. Of this, £12,500 is free of tax, leaving £17,949.10 taxable at 20%. That gives a figure of £3,589.82.

50. The total, grossed up award under the Equality Act is therefore as follows:

Sub total under paragraph 42 above:	104,782.25
Interest	14,416.25
Add for grossing up	3,589.82
	122,788.32

51. I have included in my judgment provision for the parties to apply in respect of any matters of calculation, and in relation to grossing up in particular. I have done so because I have not had the benefit of the parties' assistance on the calculations or on grossing up. I emphasise that this limited provision is restricted to the stated matters.

Breach of contract

52. The schedule, supported by the Claimant's evidence, puts the quantum of compensation for breach of contract (essentially, the Claimant's relocation expenses) at £11,865.02. The Third Respondent has queried the amount for the deposit paid in respect of the Claimant's alternative accommodation, to the effect that this should be refundable. Although the Third Respondent did not attend the hearing to pursues this (or any other) point, and it was not covered on the Claimant's evidence, it seems to me that it must be the case that either the deposit was refunded, or that it was not refunded for a reason unconnected with the acts of discrimination. The amount of 4 months' rent from 4 October 2018 to 3 February 2019, plus the deposit, is put t £9,408.67. If the deposit was equal to one month's rent, as is customary the figure would be £1,881.73 (£9,408.67 divided by 5). I therefore deduct that from the compensation for breach of contract, giving £9,983.29.

53. For the reasons given above in relation to the award under the Equality Act, I consider that there should be an uplift of 25% for unreasonable failure to comply with the ACAS Code. That amounts to £2,495.82. The total award of compensation for breach of contract is therefore £9,983.29 + £2,495.82 = £12,479.11

Costs application

54. Rule 76 of the Rules of Procedure includes the following provision about costs:

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

55. The decision in principle as to whether to make a costs order therefore involves the Tribunal deciding whether the threshold requirement of unreasonable conduct, etc, has been made out; and then (if it has) deciding whether, as a matter of discretion, such an order should be made.

56. Rule 78 provides that the Tribunal may order the paying party to pay a specified amount, not exceeding £20,000; or to pay the whole or a specified part of the receiving party's costs, with the amount to be determined by way of a detailed assessment. Rule 84 provides that in deciding whether to make a costs order, and if so in what amount, the Tribunal may have regard to the paying party's ability to pay.

57. In **Vaughan v London Borough of Lewisham [2013] IRLR 713** the Employment Appeal Tribunal (Underhill J) stated that there was no absolute obligation to have regard to means at all, and that the Tribunal was not required to make a firm finding as to the maximum that it believed that the paying party could pay, either forthwith or within some specified timescale. Underhill J added that:

"If there was a realistic prospect that the Appellant might at some point in the future be able to afford to pay a substantial amount it was legitimate to make a costs order in that amount so that the Respondents would be able to make some recovery when and if that occurred."

58. I refer once again to the procedural history as set out in the reasons given for my previous judgments and earlier in these reasons. That history was relied upon by Mr Milsom in relation to the costs application.

59. I find that the Respondents have, through the Third Respondent, acted unreasonably in the way that the proceedings have been conducted. It would be disproportionate to set out every point at which there has been unreasonable conduct. I give the following examples, which illustrate that there has been unreasonable conduct on the Respondents' part throughout the proceedings:

59.1 At the outset, the Respondents took a point as to the Tribunal's territorial jurisdiction, but did not then engage with the process in order to advance that argument.

59.2 The Respondents sought a postponement of the full merits hearing on grounds which included that they had not understood what was meant by the order for exchange of witness statements, when that order clearly explained what was required.

59.3 They sought a reconsideration of the liability judgment on grounds which included the Third Respondent's medical condition, and thereafter maintained the improbable proposition that, under Canadian law, an order of the Court was required for an individual to have access to his own medical records, while failing to produce any evidence or statutory reference to support this.

59.4 I have already commented above on the Third Respondent's witness statement produced for this remedies hearing.

60. Additionally, and as described earlier and in previous reasons, the Respondents have persistently breached the Tribunal's orders, either by failing to comply at all, or by purporting to comply after the time for doing so had passed.

61. I therefore find that the discretion to make a costs order arises in the present case, and I have gone on to consider the exercise of that discretion.

62. I find nothing in the general conduct of the litigation to suggest that I should not make a costs order: in fact, the reverse.

63. The Third Respondent has maintained that he, and by extension the other Respondents, does not have the means to pay a costs order. I referred in my reasons for the judgment on reconsideration to his (after the event) statement that he was seeking to borrow money in order to fund the litigation.

64. On this point, I agree with Mr Milsom's argument to the effect that the Tribunal should not be swayed by statements, unsupported by any evidence, that the Respondents are not able to meet any costs order that may be made. The Respondents clearly had means in the past. There has been no evidence as to what may have happened to their business, or as to the Third Respondent's financial position.

65. I also have regard to the guidance given in **Vaughan**, set out above. Although the Third Respondent has made various assertions about his current financial situation, there is no supporting evidence for any of this. There is no evidence as to what ability to pay the Respondents may have in the future. I have concluded that I should not regard the question of ability to pay as an impediment to the making of a costs order. In fact, I have no worthwhile evidence about the Respondents' ability to pay.

66. I have therefore concluded that I should make the costs order sought by the Claimant, which is that the Respondents should pay the whole of her costs of the claim, to be the subject of a detailed assessment.

67. The total amount of costs incurred is put at around £99,000, including VAT. Mr Milsom asked that, in the event that I made such an order, I should also order what would amount to an interim payment in respect of costs. I can see the practical merit of that suggestion: it would enable the Claimant to learn the outcome of seeking to enforce that element before incurring the additional costs of a detailed assessment.

68. For the basis of this application, Mr Milsom formulated his arguments in two ways, namely:

    68.1 Rule 78 makes provision for the amount of a costs order. Paragraphs (a) to (e) list the particular orders that a Tribunal may make. These are not mutually exclusive, as a Tribunal could (for example) make an

order under paragraph (c) for reimbursement of a fee (when fees were applicable) and under paragraph (d) for witness expenses. He contended that the same was true for paragraphs (a) (payment of a specified amount not exceeding £20,000) and (b) (an order to pay the whole or a specified part of the costs, to be determined by detailed assessment). Here, the specified part of the costs would be that part exceeding £20,000. I accepted this submission, and found that the rule should be read in that way.

68.2 In a different context, in **Sarnoff v YZ [2021] EWCA Civ 26**, the Court of Appeal held that the Tribunal's case management powers were not limited to particular powers specified in the Rules. I did not read this authority as extending as far as enabling the Tribunal to effectively create a form of costs order that goes beyond the express provisions in the Rules.

69. I have therefore made an order for payment of £20,000 under Rule 78(1)(a) and for payment of the balance of the Claimant's costs in excess of £20,000, with the amount to be determined by detailed assessment.

70. I find that the award in respect of breach of contract should be against the First and Second Respondents, as they were the contracting parties.

71. The award under the Equality Act and the costs order should be joint and several, against all three Respondents. The Third Respondent was, as an individual, responsible for all of the acts of discrimination. He was also responsible for the conduct of the litigation. He should therefore be personally liable for these elements. He has acted throughout on behalf of the First and Second Respondents, who are, I find, vicariously liable for his actions.

Employment Judge Glennie

Dated: ……..……21 June 2021……..

Judgment sent to the parties on:

22/06/2021..

For the Tribunal Office