



EMPLOYMENT TRIBUNALS

Claimant: Miss M Georgiev

Respondent: Hanover Insolvency Limited

HELD AT: Manchester

ON: 21-22 April 2021
and 14 June 2021 (in
chambers)

BEFORE: Employment Judge Slater
Ms C S Jammeh
Mr A J Gill

REPRESENTATION:

Claimant: In person

Respondent: Mr J Boyd, counsel

JUDGMENT ON REMEDY

The judgment of the Tribunal is that:

1. The respondent is ordered to pay to the claimant compensation of £64,783, including interest, for the acts of discrimination contrary to s.18 and s.39 Equality Act 2010 which the Tribunal found to have occurred, as set out in the Tribunal's judgment on liability sent to the parties on 14 February 2020.
2. No award of compensation is made for unfair dismissal since compensation for loss of earnings has been included in the compensation for unlawful discrimination.
3. No award of damages is made for breach of contract since compensation for the notice period has been included in the compensation for unlawful discrimination.

REASONS

Introduction

1. This was a hearing conducted by video conference (CVP) to which the parties had consented.
2. This was a remedy hearing following from judgment given orally on 7 February 2020, for which the written judgment and reasons were sent to the parties on 14 February 2020.
3. We heard evidence and the respondent's oral submissions in the course of 21-22 April 2021, but the claimant did not feel well enough to make her submissions orally. The claimant informed the Tribunal over the lunch break on the second day of the hearing that she was having contractions. She said after the lunch break that she wanted to carry on. We, therefore, went on to hear the respondent's oral submissions, although the judge told the claimant that we could stop at any time. After Mr Boyd had made his oral submissions, the claimant told us that she did not feel well enough to do oral submissions that day but suggested she could do them in writing for the following day. We agreed that the claimant could provide written submissions by 26 April 2021, to which the respondent would have a right to respond by 30 April 2021, although we informed the claimant that, if she did go into labour, she should ask someone to write on her behalf to the Tribunal to ask for an extension of time to provide her submissions. In the event, the claimant provided written submissions and the respondent a written reply to the timetable that had been agreed and the Tribunal reached its decision in chambers on 14 June 2021.

Issues

4. The Tribunal had to determine remedy for the following complaints:
 - 4.1. Unfair dismissal
 - 4.2. Discrimination in relation to dismissal, contrary to s.18 and s.39 Equality Act 2010.
 - 4.3. Breach of contract for dismissing the claimant without notice.

Evidence

5. The claimant, her husband, Georgi Georgiev, and her mother, Hina Premjee, provided written witness statements and gave oral evidence. The claimant also relied on the witness statement that she had produced for the previous hearing which had decided liability. There was no witness evidence for the respondent at the remedy hearing.
6. There was an electronic bundle of documents of 532 pages. During the course of the hearing, the claimant provided us with some additional documents relating to her claims for Employment Support Allowance and Personal Independence Payment. Page references in these reasons are to the electronic numbers of pages in the

bundle (which did not correspond completely to the printed numbers, of which there were sometimes several numbers on one page).

Facts

7. We rely on facts found in our judgment and reasons on liability sent to the parties on 14 February 2020. References indicated by “J[number]”, relate to paragraphs in those reasons on liability. We make the following additional findings of fact.

8. The claimant had some issues with her mental health prior to her employment with the respondent. Her medical information included that she had had a prolonged period off work with depression some years prior to 2012. However, she had not had any lengthy time off work due to mental health issues for quite some years prior to her employment with the respondent.

9. The claimant’s employment with the respondent ended on 8 October 2018.

10. The claimant began looking for work, attending the job centre by 15 October 2018. (p.274).

11. GP notes from 15 October 2018 recorded that the claimant had been dismissed. The GP noted that she was under a lot of stress but had no thoughts of self-harm/suicide. (260). The notes also refer to planning a wedding as a source of stress and to the claimant being worried about family members, other than her mother, finding out she was pregnant. (p.274)

12. From GP records, we find that, on a date after 15 October and before 25 October 2018, the claimant had a miscarriage. (p.272)

13. The claimant, when it was suggested to her that she might be downplaying how upset she was to emphasise the treatment of the respondent, referred to her pregnancy having been a shock and to having had a 5 year plan to work her way up the career ladder, buy a house and then have a baby. She said the miscarriage was upsetting but she was so consumed with everything else she did not feel she grieved.

14. GP notes from 16 November 2018 refer to the claimant having anxiety, but recorded that it was entirely normal to feel anxious and upset post-miscarriage and loss of job.

15. The claimant got engaged just before she was dismissed. She planned her wedding at short notice and she and her husband got married on 22 November 2018. The claimant says she did not find the planning stressful, since the venue arranged everything apart from the claimant buying a dress. We find, based on the GP notes, that it is more likely than not that the claimant found the preparation for the wedding stressful to some extent, but it was not a major factor in the way she was feeling at that time, given that the venue was organising virtually everything. The claimant found the wedding day itself stressful, being around other people.

16. GP notes from 3 December 2018 (p.261) refer to the claimant suffering from depression and her relationship being under strain. There are references to feeling

low, poor motivation, poor care of self and that she did not want medication but now felt she needed it.

17. In December 2018, the claimant attempted suicide by means of an overdose of paracetamol. Her husband found her, and she was sick so did not need to have her stomach pumped.

18. At the end of 2018, the claimant was not in a fit state to work or fill in any application forms.

19. The claimant had, about 3-4 years before her dismissal, occasionally acted as a make-up model on an unpaid basis. In the period December 2018 to November 2019, she occasionally provided her services on a voluntary basis and sometimes for payment for the P. Louise Academy. Over 11 months, she attended 17 sessions, sometimes just for half a day. She received 12 payments for this work, totalling £717.

20. The claimant presented her claim on 7 January 2019.

21. On 7 March 2019, the claimant's GP received a notification of a work capability assessment for the claimant. This stated that she met the criteria for employment and support allowance, having been assessed as having limited or no capability for work. The claimant's GP was informed that the GP no longer needed to issue an NHS medical certificate for the claimant to claim benefits. (p.347)

22. The claimant only felt well enough to start applying for jobs in September 2019. There are a number of documents suggesting the claimant was looking for work in September and early October 2019.

23. On 7 October 2019, the claimant suffered a second miscarriage.

24. Also in October 2019, the claimant made a second suicide attempt, taking an overdose and being found in the bath. The claimant was unsure whether the suicide attempt was before or after the miscarriage. The claimant's mother thought this was before the miscarriage. However, the GP notes suggest that the suicide attempt followed the miscarriage. We find, based on the medical notes, that the suicide attempt followed the miscarriage. (p.271).

25. On 28 October 2019, the claimant was offered employment with UK Debt Services, with people she had previously worked with. The claimant informed them that she was suffering from depression. She felt unable to return to full-time work because of this and she began work on a part-time basis, working 25 hours per week, 10 a.m. to 3 p.m., with effect from 4 November 2019. The claimant ceased to receive Employment Support Allowance (ESA) on starting work.

26. The claimant continued to have problems with anxiety, stress and depression during her employment with UK Debt Services. GP notes from 13 November 2019 record that she told the GP that she had been offered work by an old boss after coming out of hospital and felt she could not say no but was struggling with the work, finding it difficult to concentrate, not sleeping very well and having fleeting thoughts of not being here. On the basis of Mr Georgiev's evidence, we find that a factor in the claimant's return to work was also their difficult financial situation. Based on the

claimant's evidence, she also felt that going to work would give her something to focus on and help her recovery.

27. On 16 November 2019, the claimant's GP wrote a letter "to whom it may concern", in which the GP wrote (p.253):

"She [the claimant] has been going through a tough time recently and has been experiencing extreme anxiousness, anxiety and panic attacks. She has been under counselling for that reason, she was also recommended to be put on medication. According to Maya her symptoms have gone worse since she had an incident in her previous job where she was sacked, that put a lot of stress on her and she is not managing well ever since."

28. The claimant was receiving counselling through an organisation called Healthy Minds. The claimant could not recall exactly when the counselling began, but thought it may have been a few months after the suicide attempt in December 2019. The claimant joined the Creative Living Centre, which arranged the counselling.

29. The claimant was dismissed by UK Debt Services with effect from 17 February 2020. In a letter dated 21 February 2020, she was informed that the reason for the decision was due to concerns over her suitability for the role in the company. The claimant disputes the reasons given and is claiming, in separate Tribunal proceedings, that the termination of her employment was disability discrimination.

30. The claimant had hoped, if her health permitted, to stay with UK Debt Services for at least 5 years.

31. GP notes from 24 February 2020 refer to the claimant having lost the job with UK Debt Services. It describes that she is feeling a lot of stress from the original case, and, although having expected closure after winning the case, she was feeling stress from deadlines relating to an appeal. There is reference to fleeting suicidal thoughts and an adverse reaction to medication. The notes refer to her having started going to Creative Living and finding this helpful.

32. GP notes from 3 March 2020, show that the claimant was having suicidal thoughts (p.256).

33. There is evidence of the claimant looking for jobs from March 2020.

34. The claimant began to receive universal credit from 17 April 2020. This later changed to new style employment support allowance.

35. GP notes from 22 April 2020 (p.266) record that the claimant was feeling low in mood, energy and motivation. The notes referred to having been dismissed from her last 2 jobs and the claimant having fleeting thoughts that people would be better off without her, although she had no plans to harm herself.

36. The claimant presented a claim against UK Debt Service Limited on 18 May 2020 for disability discrimination (p.506). That case is still to be heard.

37. The claimant has asserted, in her claim against UK Debt Service Limited, that the actions of that company put her mental health in the worst state it had ever been in. However, in evidence to this Tribunal, she said that was not true, it had spiralled before that and continued to get worse. We consider it more likely than not that the claimant, when writing the details of claim against UK Debt Service Limited, genuinely considered that her treatment by UK Debt Service Limited had, at least, made a significant contribution towards her mental health deteriorating to the worst state it had been in.

38. GP notes from 18 June 2020 (p.265) record that she had not reacted well to medication and was struggling to sleep. She lacked motivation to do anything at all. The notes record that the claimant said she was under a lot of pressure and could not cope.

39. Medical notes from 28 July 2020 record ongoing issues with stress (p.264), and problems with anti-depressants. They refer to the claimant having thoughts of being better off not being here but not having any plans to act on the thoughts. They refer to the claimant having support from Creative Living. The notes record that the claimant was finding the stress overwhelming. She lacked motivation to get out of bed. The claimant referred to the cases having taken over her life. She referred to being constantly worried and on edge.

40. We have not seen any relevant GP notes after 28 July 2020.

41. The claimant was been awarded a Personal Independence Payment from 28 September 2020. Part of this is to help with the claimant's mobility needs. The claimant suffers with joint pains and muscle pains. We accept the claimant's evidence that that PIP was awarded partly due to suffering from depression and partly because of the physical health issues.

42. Alex Ryder gave evidence at the liability hearing that there was a bonus of £20 each for drafting 60 or more IVA cases per month. Below that, no bonus was payable. We accept his evidence in relation to the bonus arrangements. We also accept the claimant's evidence that, if an employee was on holiday or sick leave, the target was pro-rated. The claimant received a bonus of £400 in October 2018 because the target was pro-rated because she was on sick leave for part of that month. Alex Ryder and Lucy Waring informed the claimant at a meeting on 13 or 14 September 2018 that she was doing just fine and would have no problems passing her probationary period based on the standard of her proposals and that her work and performance were more than satisfactory (J16).

43. The claimant was, at the time of the remedy hearing, pregnant with twins and close to her due date.

44. The claimant took medication for depression and anxiety at various times until shortly before her current pregnancy, about 8 months prior to the remedy hearing. She was not on medication constantly, because some types made her very ill and she tried a number of different kinds.

45. We had no expert evidence to assist us in relation to the claim for personal injury.

46. From the claimant's bank statements, it appears she received benefits from the DWP totalling £3831.65 in the period after 8 October 2018 until starting work with UK Debt Services on 4 November 2019.

47. Since 12 April 2021, the claimant has received new style ESA of £114.10 per week and PIP of £152.15 per week. The parties agreed that the Tribunal could use an estimate of ESA at £113 per week prior to 13 April 2021 in the absence of specific information about the amount received.

48. The claimant's net basic weekly pay with the respondent was £352.74. As noted previously, the claimant had been assured by Alex Ryder and Lucy Waring that her work and performance were more than satisfactory which suggests to us that the claimant would have been expected normally to meet the target to receive some bonus (60 cases per month). The fact that the claimant received a bonus of £400 in October 2018 on a pro rata basis suggests to us that the claimant was performing well enough for the respondent to have expected her to receive a bonus of £1200 for a month when she worked for the full month.

49. The claimant's net monthly pay with UK Debt Services Ltd was £1654.88, based on information in her December 2019 payslip, giving a net weekly equivalent of £381.90.

Submissions

50. Mr Boyd provided written summary submissions and made oral submissions on behalf of the respondent.

51. Mr Boyd submitted that the employment with UK Debt Service Limited broke the chain of causation; term save for what the claimant now alleges is discriminatory treatment.

52. In relation to the personal injury claim, Mr Boyd submitted that, in the absence of a medical report, the tribunal did not have the evidence it would need in relation to diagnosis, prognosis and causative link with events at work. The claimant had suffered anxiety and depression before the events. She had a number of significant life challenging events. Mr Boyd suggested that the claimant's evidence to the tribunal seemed to downplay those events. He submitted that any injury was caused not by the respondent but by the life events.

53. Mr Boyd submitted that, in relation to the period 8 October 2018 to 4 November 2019, the tribunal would need to consider the extent to which life events in the claimant's life would have occurred in any event and the impact they might have had on the claimant's job with the respondent. He suggested the claimant would likely have taken time away from work which would have an impact on what she could recover.

54. We note that the respondent's counter schedule of loss includes loss of basic salary to 7 October 2019 (the date of the second miscarriage) and does not make any deduction for any time that the claimant might have taken off work following the first miscarriage.

55. In relation to aggravated damages, Mr Boyd referred to *Rookes v Barnard* [1964] UKHL 1 and *HM Prison Service v Johnson* [1997] IRLR 162. He submitted that it was not the case here that conduct was malicious, insulting or oppressive behaviour or treatment based on prejudice or animosity which was spiteful or vindictive or intended to wound.

56. In relation to the alleged breach of an ACAS code, Mr Boyd submitted that there was no alleged failure against a relevant Code in this case.

57. In a written reply to the claimant's submissions, Mr Boyd made some points where he submitted that the claimant had, in her submissions, mischaracterised evidence given during the course of the hearing or misrepresented/misunderstood things said by Counsel or attempted to introduce new evidence. He reminded the Tribunal that, where in the submissions, the claimant seeks to introduce new evidence, that evidence should be ignored.

58. The claimant provided written submissions following the hearing. The claimant included some new information in her written submissions which was not given in evidence. The Tribunal has not made any findings of fact on the basis of new evidence in the claimant's submissions.

59. The claimant made submissions about the facts in the case. We do not seek to summarise these submissions, which can be read in full, if required.

Law

60. Section 124(6) of the Equality Act 2010 provides that the amount of compensation which may be awarded for a breach of the Equality Act in relation to work is "the amount which could be awarded by a county court...under section 119". Section 119 provides that the county court has power to grant any remedy which could be granted by the High Court in proceedings in tort and section 119(4) provides: "an award of damages may include compensation for injured feelings (whether or not it includes compensation on any other basis)". The aim of damages in tort is to put the claimant in the position they would have been in, had the act of discrimination not occurred. Compensation (with the possible exception of exemplary damages which may be relevant in rare cases) is to compensate for loss caused by the act of discrimination. There is no limit on compensation for discrimination.

61. A new intervening act may break the chain of causation so that the respondent is not liable for loss occurring after that new act. We were referred to *Dench v Flynn & Partners* [1998] IRLR 653 CA in relation to breaks in the chain of causation.

62. In relation to compensation for injury to feeling, we have regard to the guidelines in *Vento v Chief Constable of West Yorkshire Police (no.2)* [2003] IRLR 102. We note, in particular, the guidance that awards are compensatory and not punitive. *Vento* sets out the bands that we must consider. These were amended by the case of *Da'Bell v NSPCC* [2010] IRLR 19. The Court of Appeal in *Da Souza v Vinci Construction (UK) Ltd* [2017] EWCA Civ 879, held that the 10% uplift provided for in *Simmons v Castle* [2012] EWCA Civ 1039, should also apply to employment tribunal awards of compensation for injury to feelings and psychiatric injury in England and

Wales. The Court of Appeal invited the President of the Employment Tribunals to issue guidance adjusting the *Vento* figures for inflation and incorporating the *Simmons v Castle* uplift. The Presidents of the Employment Tribunals in England and Wales and Scotland issued joint guidance, which has been updated on a number of occasions. The guidance provides that, in relation to cases presented after 6 April 2018 (which is the relevant date for this case), the *Vento* bands are as follows: lower band £900- £8,600 (less serious cases); middle band £8600 - £25,700 (cases that do not merit an award in the upper band); and upper band £25,700 - £42,900 (the most serious cases). In the most exceptional cases, the award can exceed £42,900.

63. The Tribunal has jurisdiction to award compensation for personal injury arising out of unlawful discrimination: *Sheriff v Klyne Tugs (Lowestoft) Limited* [1999] ICR 1170. The Judicial Studies Board issues Guidelines for Assessment of Damages in Personal Injury Litigation which includes a chapter on Psychiatric and Psychological Damage.

64. The Tribunal may make separate awards for injury to feelings and for personal injury, but the Tribunal must avoid double counting; not compensating for the same injury under two separate heads of damages.

65. A Tribunal may make a separate award of aggravated damages in certain circumstances or may include within an award of compensation for injury to feelings compensation for features which could merit an award of aggravated damages. An award of aggravated damages is to compensate the claimant for hurt feelings, not to punish the respondent. Mr Justice Underhill, then President of the EAT, in *Commissioner of Police of the Metropolis v Shaw* 2012 ICR 464, EAT, set out circumstances in which an award of aggravated damages might be made. The one which appears to be relied on by the claimant in this case is as follows: where subsequent conduct adds to the injury — for example, where the employer conducts tribunal proceedings in an unnecessarily offensive manner, or ‘rubs salt in the wound’ by plainly showing that it does not take the claimant’s complaint of discrimination seriously.

Conclusions

Loss of earnings

66. We have decided to award loss of earnings under the heading of compensation for discrimination, rather than unfair dismissal.

67. As noted previously, the aim of damages for discrimination is to put the claimant as far as possible in the position she would have been in, had the act of discrimination not occurred.

68. We have concluded that the employment with UK Debt Services was a new intervening act, which means that loss of earnings after the termination of that employment does not flow from the respondent’s act of discrimination. The claimant viewed the job with UK Debt Services as a long term prospect. She knew the people she was to work for and felt confident in the role. She described herself in the claim form for the claim against UK Debt Services as happy and content in the role and

that she was regaining her confidence. She felt she was performing well and receiving good feedback. This was not a potentially unsuitable role, taken as a short term measure. On the information available to us, it does not appear that the termination of that employment was related to the actions of the respondent. It was not predictable that the employment would end as and when it did.

69. The respondent accepted, in its counter schedule of loss, that the claimant was entitled to loss of earnings up to 7 October 2019, the date of the second miscarriage. We see no particular reason why the claimant should not be compensated for loss of earnings in the period from 7 October 2019 until she started her employment with UK Debt Services on 4 November 2019. The respondent did not, in its counter schedule of loss, suggest that any deduction should be made for the period immediately following the first miscarriage so we do not see why loss of earnings should be stopped at the time of the second miscarriage. The respondent has not given any evidence that the claimant would not have received any pay in a period of absence when she was recovering from a miscarriage. We have no evidence to suggest that she would have taken nearly a month off work after the second miscarriage. We conclude, therefore, that the claimant should be compensated for her full loss of earnings in the inclusive period 9 October 2018 (the day after the effective date of termination) until 3 November 2019 (the day before she started employment with UK Debt Services) less benefits and earnings in this period.

70. The claimant's basic pay with the respondent was £352.74 net per week, and bonus was at the rate of £1200 gross per month. We found that the claimant was performing well enough to expect to receive a bonus of £1200 for a month when she worked for the full month. There may have been months when the claimant would have been absent for part of the month, due to holiday or sickness absence, and would, therefore, have received bonus on a pro rata basis. There may have been the occasional month when the claimant would not have reached her target and, therefore, received no bonus. However, there may have been months when the claimant would have exceeded the target of 60 cases and received more bonus than £1200. Taking all of this into account, we conclude that awarding an amount equivalent to the net equivalent of a gross bonus of £1200 per month for each week of loss will arrive at a fair estimate of the claimant's loss of bonus. The net equivalent of £1200 per month is estimated to be that amount less 25% i.e. £900 per month, giving a net weekly figure for bonus of £207.70.

71. Given our conclusion that the claimant would have received bonus, the claimant's total net weekly earnings with the respondent, including bonus, were greater than her earnings with UK Debt Services. The difference is £352.74 + £207.70 (£560.44) less £381.90 i.e. £178.54 per week. The claimant, therefore, had a continuing loss of earnings once she began work with UK Debt Services. We conclude that the claimant would have been likely, had her employment not ended when it did, to have been able to increase her earnings with UK Debt Services, by earning commission and/or increasing her hours of work, so that, after 6 months, she was on equivalent earnings to those with the respondent. We, therefore, award 6 months difference in earnings as part of the award for loss of earnings.

72. Interest is awarded on the compensation for loss of earnings at the rate of 8% from the midpoint between the act of discrimination – 8 October 2018 – and the calculation date, which is 14 June 2021.

73. The calculation of loss of earnings and interest is included in the schedule at the end of these reasons.

Uplift for failure to follow ACAS Code of Practice

74. The claimant has not identified what Code of Practice she considers to have been breached and in what way this has been breached. The claimant did not submit an internal grievance, so there is no failure to follow the grievance parts of the ACAS Code of Practice on Discipline and Grievance. There is no Code of Practice which was applicable to the claimant's dismissal, which was not for a disciplinary offence. We do not, therefore, consider that we have power to make an increase in compensation under section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992.

Personal injury claim

75. We have had no expert medical evidence to assist us in determining whether the claimant has suffered psychiatric damage as a result of the acts of discrimination and, if so, the extent of this damage and the relevant category under the Judicial College Guidelines. Whilst it is not always essential for a Tribunal to have expert medical evidence to make an assessment of damages for personal injury, we consider that, in this case, where there are other factors at play which may have contributed to any psychiatric damage, the miscarriages and the termination of the claimant's employment by UK Debt Services, we consider that expert medical evidence would be required to enable us to assess the extent of the harm caused by the acts of discrimination, as opposed to other factors. The GP notes and the letter from Healthy Minds do not provide us with sufficient information to be able to make this assessment.

76. We have, therefore, concluded that we should not make a separate award of damages for personal injury in this case. We will, however, take account of many of the matters which would be relevant to a personal injury award, in arriving at an appropriate figure for compensation for injury to feelings.

Compensation for injury to feelings

77. The claimant had an existing vulnerability to anxiety and depression. However, she had not had a lengthy period of time off work due to this, prior to her dismissal by the respondent. The claimant may have reacted more strongly to the acts of discrimination than some other people may have done, but the respondent is required to compensate the claimant for the full extent of the injury suffered as a result of discrimination.

78. The claimant had a series of very difficult life events to cope with. She suffered a number of miscarriages, the first of which was only a few weeks after the acts of discrimination. After starting new employment with UK Debt Services, that employment was ended in circumstances which she considers amount to disability discrimination.

79. The claimant suffered from anxiety and depression following her dismissal by the respondent. However, despite that, she managed to attend the Job Centre and start looking for work within a week of leaving the respondent. She also managed to arrange her wedding, albeit by handing over the planning to the venue's wedding planner. She suffered a miscarriage between 15 and 25 October, but went ahead with the wedding on 22 November 2018. The claimant tried to commit suicide in December 2018. She has suffered continuing problems with depression since then and suffered a further miscarriage in October 2019 and made another attempt on her life. She has been dismissed from a second job in circumstances which have led her to bring disability discrimination claims against that employer.

80. It has been particularly difficult, in this case, to identify the hurt suffered by the claimant as a result of the acts of discrimination, because of the other difficult life events which are likely to have contributed to the way she has felt over a lengthy period of time. As at the date of the remedy hearing, the claimant was receiving PIP including an element relating to depression.

81. We conclude that the combination of the claimant's dismissal by the respondent and the first miscarriage led to the claimant feeling so bad that she attempted suicide. Without the acts of discrimination, we consider it unlikely that the claimant would have suffered so severely. She acknowledged that she was upset by the miscarriage, as we would expect would be the case. However, miscarriage is very common in the early stages of pregnancy and, had it not been for the effects of the discrimination, we consider it likely that the claimant would not have reached the depths of depression which she did. The further miscarriage and loss of the job with UK Debt Service Ltd make it difficult to know whether the claimant would have suffered ongoing depression relating to the acts of discrimination committed by the respondent had it not been for these further difficult life events.

82. Doing the best we can, we conclude that the injury to feelings suffered by the claimant as a result of the acts of discrimination falls within the upper half of the middle Vento band. We conclude that £20,000 is an appropriate award.

83. We conclude that interest should be awarded on the compensation for injury to feelings at 8% from the date of the act of discrimination, 8 October 2018, until the calculation date, 14 June 2021. The calculation of interest is set out in the schedule.

Aggravated damages

84. We could award compensation for injury to feelings if we were satisfied that the respondent's subsequent conduct added to the injury — for example, if they conducted tribunal proceedings in an unnecessarily offensive manner, or 'rubbed salt in the wound' by plainly showing that they did not take the claimant's complaint of discrimination seriously. There are other circumstances in which aggravated damages may be awarded but the claimant did not rely on those other type of circumstances.

85. The claimant made a number of arguments in her schedule of loss as to why an award should be made for aggravated damages. We deal with these in turn.

86. At paragraph 21, the claimant wrote that the respondent dismissed her solely due to her pregnancy-related sickness and thereafter continue to deny and not take responsibility for their actions. We do not consider that this amounts to the type of conduct for which aggravated damages would be appropriate.

87. At paragraph 22, the claimant wrote that she believed the respondent had attempted to intimidate her throughout the process and had attempted to wear her down with persistent emails. She felt she was personally attacked and her credibility had been tarnished throughout the industry. We have not had evidence that emails from the respondent were outside the nature of emails that could reasonably be expected in preparation for tribunal proceedings. In relation to attacks on the claimant's credibility, we dealt in our judgement on liability with the comments Ms Trotter had made on behalf of the respondent relating to the claimant's credibility (J93-96). For the reasons we gave there, we found that the attacks on the claimant's credibility were entirely unwarranted. However, we do not consider that the nature of the attacks on her credibility were of such a nature that they amount to conducting the tribunal proceedings in an unnecessarily offensive manner making an award of aggravated damages appropriate.

88. In paragraph 23, the claimant wrote that she felt that the respondent had continued to make things as difficult as possible for her by constantly providing documents late causing additional stress and forcing her to spend extra time chasing documents. She also referred to the respondent failing to comply with case management orders. Whilst it is regrettable, if it was the case, that the respondent provided documents late and did not comply with case management orders on time, the case was ready for hearing. We do not consider that late compliance with orders is behaviour of such nature which would allow us to make an award of aggravated damages.

89. In paragraph 24, the claimant refers to the respondent stating that she was afraid about informing her parents that she was pregnant and claimed that this was due to religious beliefs. The claimant said she had never made that comment and felt that Mr Morris came to that conclusion based on the colour of her skin and that she found this extremely upsetting. We dealt with this matter at paragraph 35 of our judgement on liability. The respondent had made this assertion in its response. However, the respondent gave no evidence to this effect, Mr Morris saying in answer to questions, that he did not know if religious belief had been discussed. We consider it regrettable that the respondent made such an assertion in their response which was not then backed up by evidence. However, we do not consider that this is sufficient to merit an award of aggravated damages.

90. In paragraph 25, the claimant referred to inconsistency in the respondent's responses and to the respondent failing to apologise or take responsibility for what they put her through. We do not consider that this conduct is sufficient to merit an award of aggravated damages.

91. In paragraph 26, the claimant asserted that the respondent had attempted to provide false documents in the hearing. The claimant has not explained what she was referring to. We have had no evidence on the basis of which we could conclude that the respondent had attempted to provide false documents. We cannot, therefore, make an award of aggravated damages on this basis.

92. In paragraph 27, the claimant asserted that she had been informed by her employer at UK Debt Services that Mr Morris had attempted to contact him during the week of the hearing and she felt this was a way to intimidate her. The claimant did not give evidence to this effect. Even if Mr Morris did attempt to contact her employer, that contact, by itself, would not be sufficient basis to make an award of aggravated damages.

93. The claimant alleges, at page 6 of her submissions, that the respondent was untruthful to the Tribunal in claiming that she had refused to comply with a case management order about providing relevant GP and counselling records. The evidence in the bundle does not support this allegation. The respondent wrote to the Tribunal on 28 May 2020 (p.29) asserting that the claimant had not complied fully with her disclosure obligations and making a request for specific disclosure. They did not assert that the claimant had refused to comply with a case management order. In answer to a letter from the Tribunal dated 28 July 2020 (p.33), the claimant did not assert that she had already supplied the information sought by way of specific disclosure (p.34), other than in relation to counselling records.

94. In relation to the matters raised by the claimant, we are not satisfied that the respondent conducted tribunal proceedings in an unnecessarily offensive manner, or that it 'rubbed salt in the wound' by plainly showing that it did not take the claimant's complaint of discrimination seriously. We do not consider, therefore, that it would be appropriate to make an award of aggravated damages.

Unfair dismissal

95. The claimant had not completed at least a year of service, so no basic award is payable. She claimed only loss of earnings for a compensatory award. Since we have awarded loss of earnings as part of compensation for discrimination, we make no award of compensation for unfair dismissal.

Breach of contract

96. It was agreed that the claimant would be entitled to damages for failure to give her two weeks' notice of termination. However, there is an overlap with compensation for loss of earnings awarded for discrimination. Since we have awarded the claimant compensation for a period including what should have been her notice period, as part of the discrimination compensation, we make no award of damages for breach of contract.

Grossing up

97. The total award of compensation for discrimination is more than £30,000 and will, therefore, be subject to tax on the amount in excess of £30,000. We must, therefore, gross up the award to take account of likely taxation, with the aim that the claimant, after tax is paid, will be left with the amount we have calculated as being appropriate compensation. The grossing up calculation is set out in the schedule.

98. We understand from information on the gov.uk website that new style ESA and PIP benefits are not affected by changes in the claimant's income or savings so we

do the calculation on the understanding that the claimant will continue to receive these benefits once she has received payment of the compensation award from the respondent. We also understand from the gov.uk website that new style ESA is taxable income but PIP benefits are not taxable income. We assume, for the purposes of our calculation, that the claimant will not have any taxable income in the tax year 2021/2022 other than new style ESA and the taxable element of the Tribunal's award.

SCHEDULE

Compensation Calculation

Loss of earnings

9 October 2018 to 3 November 2019 inclusive (56 weeks)

56 x £560.44 (basic pay plus bonus) = £31,384.64

Less:

Benefits	£3831.65
Modelling income	<u>£717.00</u>

£4548.65

£26,835.99

4 November 2019 to 3 May 2020 inclusive (26 weeks)

26 x £178.54 = £4,638.40

Total loss of earnings £31,384.64 + £4,638.40 = £31,474 (rounding down pence)

Interest on loss of earnings

Interest at 8% p.a. on £31,474.39 from mid point between 8 October 2018 and 14 June 2021 (10 February 2020 – 490 days)

$490/365 \times 8/100 \times £31,474.39 = £3380$ (rounding down pence)

Injury to feelings

£20,000

Interest on injury to feelings

Interest at 8% p.a. on £20,000 from 8 October 2018 until 14 June 2021 (981 days)

$981/365 \times 8/100 \times £20,000 = £4,300$ (rounding down pence).

Total award before grossing up

Loss of earnings	£31,474
Interest on loss of earnings	£3,380
Injury to feelings	£20,000
Interest on injury to feelings	<u>£4,300</u>
	£59,154

Grossing up award

1st £30,000 is tax free, balance of £29,154 is subject to tax.

Award will be taxable in tax year received – 6 April 2021 to 5 April 2022

Personal allowance in 21/22 tax year is £12,570

Claimant's other taxable income in 21/22 is New Style ESA – $52 \times £114.10 = £5933$
(rounding down pence)

Balance of personal allowance, after ESA, is £12,570 less £5933 = £6637

Estimate that claimant will be liable to tax on £29,154 less £6637 = £22,517.

Applicable tax rate is 20%.

Gross up £22,517 at applicable rate:

$100/80 \times £22,517 = £28,146$

Grossed up total award is:

Tax free element	£30,000
Balance of personal allowance	£6637
Grossed up taxable element	<u>£28,146</u>

Total award (excluding interest) £64,783

Employment Judge Slater

Date: 18 June 2021

RESERVED JUDGMENT & REASONS
SENT TO THE PARTIES ON
22 June 2021

FOR THE TRIBUNAL OFFICE

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.



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

Tribunal case number: **2400113/2019**

Name of case: **Miss M Georgiev** v **Hanover Insolvency Limited**

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

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

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

"the relevant judgment day" is: 22 June 2021

"the calculation day" is: 23 June 2021

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

Mr S Artingstall
For the Employment Tribunal Office

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

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

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

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".
3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.
4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).
5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.
6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.