EMPLOYMENT TRIBUNALS

Claimant: **Miss Gemma Wharton**

Respondents: **Mr. Richard Harrington (R1)**
Dunston Lodge Ltd (R2)

Heard at: **Via Cloud Video Platform (Midlands East Region)**

On: **8th September 2021**

Before: **Employment Judge Heap**
Members: **Ms. K McLeod**
Mr. C Pittman

Representation
Claimant: **Mr. T Wood - Counsel**
Respondent: **Mr. R Ryan – Counsel**

COVID-19 Statement

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was fully remote via CVP. A face to face hearing was not held because it was not practicable, no-one requested the same and all issues could be determined in a remote hearing.

RESERVED JUDGMENT

1. The First and Second Respondents subjected the Claimant to unlawful discrimination contrary to Section 18 Equality Act 2010 and they are Ordered, jointly and severally, to pay to the Claimant the total sum of **£14,754.71** made up as follows:

Injury to feelings (including interest)	**£13,413.37**
Adjustment under Section 207A Trade Union & Labour Relations (Consolidation) Act 1992	**£ 1,341.34**

REASONS

1. This hearing followed on from a Reserved Judgment on liability ("The Liability Judgment") in which we found in favour of the Claimant in respect of all five of her complaints brought pursuant to Section 18 Equality Act 2010.

2. The purpose of today's hearing was therefore to deal with the remedy which it was appropriate to Order so as to compensate the Claimant for the acts of discrimination to which she was subjected.

3. Despite that, a considerable portion of the witness statement of the First Respondent appeared dedicated to challenges to the findings of fact which we had made within the Liability Judgment. That statement was made at a time before the Respondents were legally represented but they have now had the considerable benefit of having instructed Mr. Ryan of Counsel who appeared on their behalf today. The challenges to the Liability Judgment have therefore sensibly not been advanced given the absence of any application for Reconsideration or any appeal.

4. At the outset of the hearing we raised with Mr. Wood the position as to the Claimant's claim, as set out in the schedule of loss, regarding seeking sums for loss of earnings given the absence of a claim of constructive dismissal. Mr. Ryan indicated that he had also intended to raise that point had we not done so. Mr. Wood's position was that a loss of earnings flowed from the acts of discrimination complained of by the Claimant and so were recoverable. Mr. Ryan contended to the contrary and that absent a successful complaint of constructive dismissal, it was not now open to the Claimant to seek to claim for any loss of earnings.

5. The parties were agreed, as were we, that we should deal with this as a Preliminary point given that, if we were against the Claimant on the point, then this would result in a considerable reduction in the time that would need to be spent in cross examination, particularly in relation to the evidence of the First Respondent.

6. We heard helpful submissions from both Counsel on the point and gave our decision and reasons orally at the time. Neither party has asked that those be included within this Judgment and so we need say no more about them save as to say that we concluded that it was not open to the Claimant to recover compensation for loss of earnings in these proceedings.

7. Unfortunately, by close of submissions we had insufficient time to deliberate and deliver our Judgment orally as we had intended. We therefore reserved our Judgment.

THE PARTIES' RESPECTIVE POSITIONS

8. We set out here the respective positions of the parties on each of the heads of claim sought by the Claimant.

Damages for injury to feelings

9. The Claimant's schedule of loss sets out compensation for injury to feelings at £15,000.00. Mr. Wood invited us to make an award at that level for the reasons that we set out below.

10. Mr. Ryan's position on behalf of both Respondents was that such an award would be excessive; that this was a lower band case and that any award

should be between £5,000.00 and £7,500.00 or, at most, a lower middle band case.

11. Mr. Wood contends that the matters companied of are serious and have had a significant impact on the Claimant. He also invites us to consider what he termed to be an aggravating factor on the Claimant which was caused by the First Respondent making unfounded allegations in his witness statement prepared for the remedy hearing that she had bullied and been aggressive towards other members of staff which had resulted in them leaving the employment of the Second Respondent. That was a matter which the First Respondent accepted in cross examination had no relevance to the issues to be determined in this hearing. Mr. Wood confirmed that he did not, however, seek any separate award of aggravated damages.

12. Mr. Ryan accepted that in principle there was nothing which prevented us from taking into account the "aggravating factor" which Mr. Wood relies upon in our consideration as to an appropriate amount of compensation for injury to feelings but remained of the view that the sum of £5,000.00 to £7,500.00 was in all events adequate to compensate the Claimant for any injury occasioned to her feelings.

13. We have considered in further detail in our conclusions below the other more specific points raised by Counsel in their respective submissions.

<u>An adjustment to compensation under Section 207A Trade Union & Labour Relations (Consolidation) Act 1992</u>

14. Mr. Wood submitted that there should be an adjustment to compensation as a result of the Respondents having failed to comply with the ACAS Code of Practice on Grievance & Disciplinary Procedures ("ACAS Code"). He relied upon the findings within the Liability Judgment and contended that they warranted an upward adjustment of 25% to compensation awarded.

15. Mr. Ryan accepted that the Claimant had raised a grievance and that on the face of it we were in a position to make an adjustment if the Respondent had failed to comply with the ACAS Code. However, he submitted that the Claimant's evidence had been such that she had not expected a meeting to be held to discuss her complaints but only an outcome letter to be sent to her. He also pointed out that the grievance only concerned part of the complaints which had been advanced in these proceedings and taking into account the size and resources of the Respondents if the Tribunal determined that such an adjustment was appropriate, this ought to be in the order of 10% rather than the 25% which the Claimant contends would be appropriate.

<u>Interest</u>

16. It is not in dispute that interest may be awarded nor that the rate of 8% per annum is the appropriate rate[1]. However, we raised with the parties the appropriate date upon which it is said that interest should begin to run given that the acts of discrimination which we had found to be made out spanned

[1] See the Employment Tribunals (Interest on Awards in Discrimination Cases) (Amendment) Regulations 2013.

from November 2018 to May 2019 when the First Respondent failed to deal with the Claimant's grievance.

17. Mr. Wood submitted that the appropriate date was 19th December 2018 when the Respondents would have had the opportunity to carry out a risk assessment after the Claimant had submitted her MAT1B form. That had occurred on or around 12th December 2018 (see paragraph 59 of the Liability Judgment). He submitted that his argument was supported by the decision of the Employment Appeal Tribunal in **Al Jumard v Clwyd Leisure Ltd [2008] IRLR 345** given that the case had been remitted to the Tribunal to consider (amongst, it has to be said, other things) whether interest ought to have been calculated from the first act of discrimination identified which appeared to have been overlooked by the Tribunal at first instance. Mr. Wood does accept, however, that Tribunals have a broad discretion when considering the question of interest.

18. Mr. Ryan submitted that the date should be some point mid point between the date of the first and final acts of discrimination so as not to give the Claimant a windfall. He indicated that he believed that he had an authority for that proposition, but he was not ultimately able to take us to one.

THE HEARING

19. We had before us a Remedy bundle agreed between the parties running to some 156 pages, although given our decision as to the recoverability of compensation for loss of earnings in this claim it was only necessary for us to consider a relatively small number of them.

20. In addition to the documentary evidence, we also heard from the Claimant on her own account and on behalf of the Respondents we again heard the First Respondent. It appeared that there had been an intention, before the Respondents were legally represented, to call another witness, a Ms. Talbot, but Mr. Ryan confirmed that that was no longer the case. We were not asked to consider the statement that she had prepared and so we say no more about that.

21. We have also considered the very helpful oral submissions made by Mr. Wood on behalf of the Claimant and the equally helpful written and oral submissions from Mr. Ryan on behalf of the Respondents. We are grateful to both of them and whilst we have not set out in complete detail in this Judgment all that they have said to us, the parties can be assured that we have taken everything into account before making our decision.

22. As indicated above, the hearing was conducted in wholly remote form via CVP. Whilst it is fair to say that there was a degree of technical difficulty, that was ultimately able to be overcome and we are satisfied that we were able to have a fair and effective hearing.

THE LAW

23. Section 124 Equality Act 2010 deals with the ability of the Tribunal to make Orders where a complaint or complaints of unlawful discrimination have been made out. The relevant parts of Section 124 provide as follows:

124 Remedies: general

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

(2)The tribunal may—

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

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

(c) make an appropriate recommendation.

. . . . . .

(6)The amount of compensation which may be awarded under subsection (2)(b) corresponds to the amount which could be awarded by the county court or the sheriff under section 119."

24. It is common ground that an Order for compensation under Section 124 Equality Act 2010 can include compensation for injury to feelings. Guidance given in **Vento** identified three bands into which compensation for injury to feelings might fall. In respect of that guidance the Court of Appeal in **Vento** said this:

"Employment Tribunals and those who practise in them might find it helpful if this Court were to identify three broad bands of compensation for injury to feelings, as distinct from compensation for psychiatric or similar personal injury.

i) The top band should normally be between £15,000 and £25,000. Sums in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race. This case falls within that band. Only in the most exceptional case should an award of compensation for injury to feelings exceed £25,000.

ii) The middle band of between £5,000 and £15,000 should be used for serious cases, which do not merit an award in the highest band.

iii) Awards of between £500 and £5,000 are appropriate for less serious cases, such as where the act of discrimination is an isolated or one off occurrence. In general, awards of less than £500 are to be avoided altogether, as they risk being regarded as so low as not to be a proper recognition of injury to feelings.

There is, of course, within each band considerable flexibility, allowing tribunals to fix what is considered to be fair, reasonable and just compensation in the particular circumstances of the case."

25. The **Vento** bands had been revisited and the second addendum to the joint Presidential Guidance which was issued on 5th September 2017 is applicable to this claim[2] and the relevant part says this:

"In respect of claims presented on or after 6th April 2019, the Vento bands shall be as follows: a lower band of £900 to £8,800 (less serious cases); a middle band of £8,800 to £26,300 (cases that do not merit an award in the upper band); and an upper band of £26,300 to £44,000 (the most serious cases), with the most exceptional cases capable of exceeding £44,000."

26. The Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 ("The Regulations") provide for interest to be awarded in respect of both financial and non-pecuniary loss flowing from acts of discrimination. The relevant provision for our purposes is Regulation 6 which provides as follows:

(1) Subject to the following paragraphs of this regulation—
(a) in the case of any sum for injury to feelings, interest shall be for the period beginning on the date of the contravention or act of discrimination complained of and ending on the day of calculation;
(b) in the case of all other sums of damages or compensation (other than any sum referred to in regulation 5 and all arrears of remuneration, interest shall be for the period beginning on the mid-point date and ending on the day of calculation.
(2) Where any payment has been made before the day of calculation to the complainant by or on behalf of the respondent in respect of the subject matter of the award, interest in respect of that part of the award covered by the payment shall be calculated as if the references in paragraph (1), and in the definition of "mid-point date" in regulation 4, to the day of calculation were to the date on which the payment was made.
(3) 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".

Adjustments under Section 207A Trade Union & Labour Relations (Consolidation) Act 1992

27. Also relevant are the provisions of Section 207A Trade Union & Labour Relations (Consolidation) Act 1992 which provide as follows:

[2] The claim having been was presented by way of a Claim Form received by the Employment Tribunal on 28th October 2019.

"207A Effect of failure to comply with Code: adjustment of awards

(1) This section applies to proceedings before an employment tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule A2.

(2) If, in the case of 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)that 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%.

(3)If, in the case of 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 employee has failed to comply with that Code in relation to that matter, and

(c)that failure was unreasonable,

the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the employee by no more than 25%.

(4) In subsections (2) and (3), "relevant Code of Practice" means a Code of Practice issued under this Chapter which relates exclusively or primarily to procedure for the resolution of disputes.

(5) Where an award falls to be adjusted under this section and under section 38 of the Employment Act 2002, the adjustment under this section shall be made before the adjustment under that section."

FINDINGS OF FACT

Impact of discriminatory events on the Claimant

28. We have confined our findings of fact to the areas of dispute between the parties.

29. The Claimant commenced her employment with the Second Respondent on 19th April 2011. This was only her second job since she had left school and was in the grooming business which is the area in which she had trained and obtained qualifications and which, by the time she left the Second Respondent, she had been working in for over a decade and a half.
30. We have considered carefully the impact that the discrimination which she suffered has had on the Claimant. Mr. Ryan did not challenge the account that the Claimant gave as to the effect that that had had upon her in his cross examination and we accept her evidence in that regard.

31. Particularly, we accepted that the Claimant's pregnancy, which should have been a very special time in her life, was blighted by the actions of the

Respondents. That was not only in respect of the upset which was caused to her by the First Respondent but also the failure to undertake a risk assessment and provide the Claimant with a suitable chair for grooming dogs placed her at risk of injury and thus the threat of harm to both herself and her unborn daughter. Had a serious incident occurred then the Claimant could have been at risk of suffering a miscarriage and, as set out in the Liability Judgment, she did suffer an incident where a large dog that she was grooming knocked her into a window.

32. We accept the Claimant's evidence that her maternity leave was ruined by the actions of the First Respondent and she was unable to concentrate on her new born daughter because the discrimination to which she had been subjected was constantly on her mind.

33. The Claimant experienced feeling that she was being punished and spending most nights in tears because of the actions of the First Respondent, particularly after submitting her grievance and it being ignored. The impact upon her led to her no longer driving her partner (who also worked for the Second Respondent) to and from work because she did not want to see the First Respondent and the thought of doing so reduced her to tears.

34. Similarly, we accept the Claimant's unchallenged evidence that she would have to be accompanied when taking her dogs to the vet or doing any shopping because she was scared that she may run into the First Respondent and that her confidence generally had been knocked such that in her new employment she had broken down in tears when she was first about to go out to see clients alone.

35. We take into account that the acts of discrimination which we found to have been made out were serious and spanned a period of almost five months when the Claimant should have been enjoying both her pregnancy and her maternity leave. Again, a special time in her life was blighted and that is a period lost that she will not be able to recover.

36. It is clear that matters have had a significant impact on the Claimant. Whilst receipt of the Liability Judgment has had a positive effect upon her feelings about the discrimination to which she was subjected, it was plain to us that she is still affected by what had happened to her. Indeed, during parts of her evidence she was visibly distressed to the point of tears over two years after the last acts of discrimination to which she was subjected. It is clear that she has still not been able to put the matter behind her; her feelings remain raw and she is still distressed at the treatment which she was subjected to by the First Respondent.

37. We are also satisfied that the Claimant was caused further distress by the inclusion within the First Respondent's witness statement of allegations that she had bullied other members of staff and displayed aggressive behaviour to the point of them having left employment with the Second Respondent because of her. There was absolutely no supporting evidence on that assertion deployed by the Respondents and we did not accept the First Respondents evidence on the point, not least because of our views as to his credibility as set out within the Liability Judgment. Moreover, the inclusion of such allegations had nothing at all to do with the issues which we were to

determine at this hearing and can only have been included to try and paint the Claimant in an unjustly negative light.

38. When asked about those allegations in supplemental questions by Mr. Wood the Claimant said that they had made her feel worthless; that she had had to stop reading the First Respondent's witness statement because otherwise she would not have been fit to go to work and the impact was obvious as she broke down crying at that point in her evidence.

39. Whilst the Claimant did not attend her doctor with regard to the feelings that she was experiencing, we accept her evidence that that was because she felt embarrassed to do so and that, indeed, at one point she had not been able to leave the house at all. The fact that she did not seek medical intervention is not, therefore, something that suggested that she was not significantly impacted by the discrimination that she was subjected to.

40. Since the Claimant's resignation she has not managed to locate other employment in the grooming industry and is presently working in a role in a different industry which she does not particularly enjoy but for which she must remain employed for two years so as to avoid re-paying training costs to her present employer. We accept that the Claimant feels that she has lost everything that she had worked to achieve in an industry that she loves and that although her intention is to try to secure another grooming role, that will take time and she will have lost valuable time in her working life undertaking roles that she does not particularly enjoy and had not focused upon in terms of her career. We should note that the Claimant is very passionate about dogs and grooming and that had been the focus of her career plans for a long period of time. Indeed, the Claimant's evidence was that "dogs are who I am" and that she missed the grooming work that she did. It is notable that the Claimant again broke down during this part of her evidence and it demonstrated the depth of her feeling about what had happened to her.

41. For all of those reasons, we accept that the Claimant was significantly affected by the actions of the First Respondent in respect of the discrimination to which he subjected her to and that those feelings still continue over two years later.

CONCLUSIONS

42. We turn now to our conclusions in relation to each of the heads of remedy sought by the Claimant.

Injury to feelings

43. We deal firstly with the question of injury to feelings. It is without doubt that the Claimant has been badly affected by the acts of discrimination that we have found to have been made out. Those were serious matters and they affected the Claimant considerably. Mr. Ryan did not challenge any of the evidence given by the Claimant in her witness statements as to the impact of these matters upon her. We have set out many of the issues in our findings of fact above but they included her being reduced to tears on most nights during her pregnancy and maternity leave; changing her usual habits so as to avoid bumping into the First Respondent; the risk of injury to her and her baby and

the effects on her mental wellbeing. Her pregnancy and maternity leave, which would usually be a special and precious time, was blighted and she was left unable to concentrate on her daughter. That is a period of time that she will never get back.

44. Even now it is clear that matters still remain raw and we viewed the impact of that on the Claimant when she was reduced to tears more than once during her evidence. Even the boost of the Liability Judgment has not rectified that and we are satisfied that the Claimant will continue to feel the effects of what happened for some time to come. That is not least as she continues to be employed now outside the industry for which she trained and loves.

45. There is no doubt from our findings of fact that the acts of the Respondents were serious and had a considerable effect on the Claimant. That needs to be reflected within the level of award for injury to feelings to be made. It is the seriousness of the acts themselves and the impact on the Claimant which we are required to, and have, focused upon and we remind ourselves that the purpose of an award of injury to feelings is to compensate the Claimant rather than to punish the Respondents.

46. We are satisfied that this is a case which falls within the middle band of **Vento**. It is a serious case, although not the most serious which would warrant an award in the higher band or so serious that it would fit towards the upper end of the middle band. The acts of the First Respondent took place over a period of five months over a special time in the Claimant's life. They were not isolated or one off occurrences that might fit within the lower band. The failure to conduct a risk assessment and provide the Claimant with a chair for her to groom dogs affected not only her not only emotionally but also placed her and her unborn child in potential physical harm. Those issues were continually ignored and were only rectified by the Claimant's partner having to purchase her a chair because of concern for her well-being.

47. The First Respondent also sought to impose contractual changes on the Claimant, which included the removal of a number of her duties and responsibilities and alter her job title which amounted to a demotion. Whilst we note the submissions of Mr. Ryan that those were not unilaterally imposed by the First Respondent and the Claimant was free to reject them, that does not lessen the impact that the proposed changes had nor the fact that only a few days before her maternity leave was due to begin she was pressed to sign a new employment contract "there and then". The Claimant and her partner were the only individuals to be singled out by being given a bespoke contract and the proposed changes gave the Claimant concern for her job at a time when security was important. When she asked the First Respondent about those matters in the grievance process, she was at first ignored and never received any satisfactory explanation at all.

48. Equally, whilst Mr. Ryan makes the point that prior to these matters the Claimant and the First Respondent had a reasonably cordial relationship and that he did not act with malicious intent, that does not lessen the impact on the Claimant that his actions had. Moreover, there is force in Mr. Wood's submission that in fact that made it all the worse that the shift in the First Respondent's attitude only came after the announcement of the Claimant's pregnancy.

49. When the Claimant raised concerns via the grievance process, they were ignored for an extended period of time and even when she finally did receive a response it was wholly inadequate.

50. Those matters and the impact that they had on the Claimant cannot in our view be said to be ones which fall within the lower **Vento** band as Mr. Ryan contends. Taking into account the relevant Presidential Guidance and the figures reflected within that for the middle band we are satisfied that the Claimant's injury to feelings award should fall towards the lower to mid area of the middle band. We consider the £15,000.00 claimed to be too high and instead consider an award of £11,000.00 is appropriate to compensate the Claimant for the impact that the acts of discrimination perpetrated by the First Respondent had upon her and the effect which the unfounded allegations of bullying and aggressive conduct relied on by the First Respondent has also had. That has rubbed salt in the wounds for the Claimant and added to her obvious distress and upset.

51. We are satisfied that that award for injury to feelings is both sufficient and appropriate to compensate the Claimant for the upset caused by the acts of discrimination made out and as dealt with within the Liability Judgment.

52. Before reaching that conclusion we have considered the first instance cases set out in the Respondent's counter schedule of loss but would observe, as per the guidance in **Vento**, that there is considerable flexibility in respect of where an award for injury to feelings may sit within each of the bands. Each case of course turns on its own facts, the severity of the conduct and its impact on the Claimant in question. Moreover, those cases are not similar on the facts and the decisions in some cases were made some considerable years ago and before the appropriate uprating of the **Vento** bands.

53. Similarly, we have considered the appellate authorities referred to in the helpful skeleton argument prepared by Mr. Ryan. Again those are cases decided on their own facts and differ materially from the circumstances of this Claimants case, one prime difference in one instance being that that Claimant was only employed by the discriminating employer for some four days. That is not the case here where discrimination continued over a period of months.

54. We are therefore satisfied that £11,000.00 is an appropriate award for injury to feelings in this case.

55. We add to that sum interest over the period of 1,001 days from the first act of discrimination complained of to the date of our determination on remedy. Again, that is at 8% and equates to the sum of £2,413.37.

56. In doing so we have rejected the argument of Mr. Ryan that we should only award interest from some midpoint within the period over which the Claimant was discriminated against. That would be the correct approach of course for financial losses[3] but not for injury to feelings. That is provided for by Regulation 5(1) of the Regulations and we are satisfied that the correct course is for interest to begin to run from the first act of discrimination that we have

[3] See Regulation 5(2) of the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations.

identified. We agree with Mr. Wood that the decision in **Al Jumard** supports that.

57. We have considered the provisions of Regulation 5(3) and whether awarding compensation from the onset of the discrimination occasioned to the Claimant would cause "serious injustice". We do not find that it would. The period in dispute in that regard between Mr. Wood and Mr. Ryan is approximately two and a half months. That cannot be said in reality to cause serious injustice. Had the period been years then we may well have agreed but it is a relatively short period of time and will not have considerable impact on the Respondents or the level of the award. The period over which we have awarded interest is therefore from 19th December 2018 to the date of this remedy hearing. That equates to a period of 1,001 days at 8% per annum and results in interest of £2,413.37 being added to the award.

Total for injury to feelings and interest: **£13,413.37**

Breach of the ACAS Code of Practice on Disciplinary & Grievance Procedures ("ACAS Code")

58. We consider that it is appropriate to make an adjustment to the sum awarded to the Claimant to reflect the fact that the Respondents failed to comply with the principles in the ACAS Code. As we set out within the Liability Judgment, the Claimant raised her grievance on 15th May 2019. The First Respondent did not invite the Claimant to a meeting to discuss her grievance and we accept the submission of Mr. Wood that it was his responsibility to do so even if the Claimant was not necessarily expecting a meeting. There was also a significant delay before the First Respondent reverted to the Claimant at all.

59. Indeed, there was no reply at all from the First Respondent to the Claimant's grievance until 5th August 2019 – almost three months later - and he was unable, as we found in the Liability Judgment, to give any reasonable explanation for that delay or why he had not followed the steps in the Second Respondent's own grievance procedure.

60. Even then, the response provided to the grievance was wholly inadequate and dealt with none of the Claimant's concerns. Particularly, it dealt with none of the concerns about the contract that she had raised nor provided any explanation for the difference in her job title. The Respondent's failure to hold a meeting, failure to deal with matters without unreasonable delay and complete failure to engage meaningfully with the subject matter of the grievance breached paragraphs 33 and 40 of the ACAS Code. We are satisfied that it was an unreasonable failure to deal with the grievance properly and in a timely fashion, particularly, given the lack of any proper explanation from the First Respondent about that.

61. Despite that almost wholesale failure to comply with the ACAS Code we do not find a 25% adjustment to be merited. The Second Respondent is a small employer not well versed in dealing with grievances of this nature. Moreover, the First Respondent was heavily reliant on his former spouse in respect of administrative matters as we identified in the Liability Judgment. Whilst the failure to follow the ACAS Code was unreasonable, the size, resources and lack of administrative capability of the First Respondent do provide some

mitigation for that position. We consider that the maximum adjustment set out in Mr. Ryan's skeleton argument of 10% is appropriate in these circumstances.

62. A 10% adjustment on the award to which we have referred above therefore equates to the sum of £1,341.34. That results in a total adjusted award of £14,754.71.

63. On a final note, whilst not relevant to the awards that we have made we should observe that although Mr. Ryan submitted that lessons had been learned by the First Respondent and evidence was also given to that effect, we were not convinced that in reality that was actually the case. If it had been, it is difficult to see why such a goodly proportion of the First Respondent's witness statement was dedicated to challenging the findings of the Liability Judgment and casting unfounded aspersions on the Claimant's character by contending that her alleged behaviour had led to the resignations of a number of staff members.

64. Whilst that has had no impact on the awards that we have made we sincerely hope that the First Respondent now takes stock of his responsibilities as an employer and that the unfortunate circumstances of this matter can be avoided in the future.

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Employment Judge Heap

Date: 30th September 2021
JUDGMENT SENT TO THE PARTIES ON

5 October 2021
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FOR THE TRIBUNAL OFFICE

Note:

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.