EMPLOYMENT TRIBUNALS

Claimant:		**Respondent:**
Mr Paul Bianca-Samou	**v**	Imperial College Healthcare NHS Trust

Heard at: Reading and by video (CVP) **On:** 27 September 2021

Before: Employment Judge Hawksworth
Ms S Hamill
Mr M Kaltz

Appearances
For the Claimant: In person
For the Respondent: Mr S Sudra (counsel)

RESERVED JUDGMENT (REMEDY)

The unanimous judgment of the tribunal is:

1. The respondent must pay the claimant the sum of £54,013.68 comprising:

    a. £30,695.32 in respect of financial losses (of which £3,891.07 is interest);
    b. £23,318.36 for injury to feelings (of which £6,168.36 is interest).

2. The tribunal recommends pursuant to section 124(2)(c) of the Equality Act 2010 that:

    a. within 4 months the respondent reviews how training is allocated to members of staff within the pathology department; and
    b. within 5 months the respondent writes to the claimant to explain the outcome of the review and any steps it will be taking as a result of the review.

3. The claimant's application for a preparation time order is refused.

REASONS

Remedy hearing and evidence

1. The claimant is a bio-medical scientist. His continuous employment with the respondent began on 4 July 2016 and he remains employed by the respondent. The claimant presented a claim to the employment tribunal on 24 March 2019. He brought complaints of direct race discrimination, harassment and victimisation. The respondent presented its ET3 on 9 May 2019 and defended the claim.

2. The liability hearing took place on 2, 3, 5 and 6 November 2020 and in chambers on 11 December 2020. The tribunal reached its decision on 11 December 2020, and the reserved judgment and reasons were dated 14 December 2020 but regrettably, as a result of an error on the part of the tribunal administration, the judgment was not sent to the parties until May 2021. As well as the lengthy delay in the parties receiving the judgment, the error also meant that the remedy hearing could not go ahead on the first date set (16 July 2021) because the parties did not receive the notice of remedy hearing and case management orders in time.

3. The tribunal's unanimous judgment on liability was that the respondent directly discriminated against the claimant because of race in refusing to allow the claimant to undertake a specialist portfolio (a professional qualification). The claimant's other complaints of direct race discrimination, and his complaints of harassment and victimisation failed and were dismissed.

4. Like the liability hearing, the remedy hearing was a hybrid hearing.

5. The respondent produced a remedy hearing bundle with 457 pages. Page references in this judgment are to that bundle.

6. We read witness statements and heard evidence from the claimant (in person) and from the respondent's Director of Operations for North West London Pathology, Ms Angela Jean-Francois (by video). Both the claimant and the respondent's counsel made submissions (closing comments).

7. We reserved judgment on remedy.

Issues for the tribunal to decide and agreed issues

8. The issue for the tribunal to decide at this hearing is the remedy which the claimant should be awarded in respect of the finding of discrimination. The parties produced a schedule of loss and a counter-schedule of loss which helpfully clarified the areas of dispute between the parties in respect of compensation. The claimant also set out six recommendations he is asking the tribunal to make.

9. In relation to loss of salary, the parties agreed that as a result of the delay in the claimant starting his specialist portfolio and the consequent delay on him being qualified for a higher paid role (at band 7), the loss of salary incurred by the claimant is £26,453.51 gross (£21,650 net).

10. We also have to decide the claimant's application for a preparation time order.

Findings of fact

11. We set out below those findings of fact from our liability judgment which are relevant to remedy, and our additional findings of fact.

Specialist portfolio

12. The claimant first asked to undertake a specialist portfolio on 1 April 2017. We found that the respondent directly discriminated against the claimant by refusing to allow him to undertake a specialist portfolio.

13. In late 2020 (after the liability hearing) the claimant was identified by the respondent as a candidate for a specialist portfolio. This was agreed in the claimant's performance and development review (PDR) in January 2021. Steps were taken for him to be registered to start his specialist portfolio, but this took some time, in part because the respondent had to apply in May 2021 for renewal of the relevant training status certification with the Institute of Biomedical Science. There were also delays caused by changes to working arrangements because of the covid-19 pandemic (page 321).

14. The claimant's specialist portfolio was issued on 24 June 2021 (page 324 and page 326).

15. The claimant therefore started his specialist portfolio around four years later than he would have done. This has led to a delay in the claimant gaining the qualification required for higher paid band 7 biomedical scientist roles. Without the discrimination, the claimant would have started and completed his specialist portfolio earlier, and would therefore have been qualified for band 7 roles around four years earlier.

Financial losses

16. There was no evidence before us to suggest that the time frame for the claimant to gain a higher paid band 7 role (whether within the respondent or with another employer) would have been any different had he started his specialist portfolio in 2017 than in 2021. We did not for example see evidence about suitable band 7 vacancies, when they arose and whether the claimant would have been likely to be appointed to these roles. We find that the time frame from the claimant starting the portfolio to achieving a band 7 role is likely to be/have been the same whether the claimant started his portfolio in 2017 or 2021, and therefore the claimant has suffered loss of salary over a period of approximately four years. The parties have agreed that the loss of salary is £26,453.51 gross (£21,650 net).

17. The claimant was a member of the respondent's pension scheme. The respondent's pension contributions were 14.3% of gross salary prior to April 2019 and 20.6% from 1 April 2019 (the additional contributions being payable by the central employer, NHS England, rather than the respondent).

The claimant's grievances

18. The claimant made his first grievance complaint on 31 July 2018. We found that this was initially dealt with promptly by the respondent but following a meeting on 16 August 2018 there was a misunderstanding or miscommunication in that the respondent thought that the claimant did not want to pursue his grievance any further, but the claimant did want his complaints considered informally. Once this misunderstanding was clarified, the respondent held another meeting on 12 October 2018 at which the claimant again confirmed that he did not want to pursue a formal grievance.

19. In February 2019 the claimant asked to resubmit his grievance and made a second grievance which included similar issues to his first grievance. The respondent held grievance and appeal meetings with the claimant in respect of the second grievance and provided him with written outcomes at both stages.

The impact of the discrimination on the claimant

20. The refusal to allow the claimant to undertake a specialist portfolio made the claimant feel rejected, betrayed and abandoned. He felt ignored regardless of his efforts. He lost his confidence. He was trained by a colleague who had been appointed to a band 7 role and allowed to start a specialist portfolio when he had not been. He found this humiliating.

21. As a result of the work-related difficulties the claimant experienced, he saw his GP. He had some time off with work related stress. He was prescribed anti-depressants and attended talking therapy. He suffered palpitations, chronic fatigue, migraines and loss of appetite. He finds it difficult to sleep and does extensive exercise during the day to help him sleep at night. We were not shown any medical evidence about the specific impact on the claimant's health of the refusal to allow the claimant to do a specialist portfolio.

22. On 10 June 2021 the respondent's training manager emailed the claimant to apologise for the anxiety and distress caused to him with regard to the specialist portfolio, and confirmed the respondent's commitment to supporting him to complete a specialist portfolio (page 321). She explained in detail the reasons for the delays which had occurred since January 2021.

23. After the liability judgment was sent to the parties, the respondent's chief executive wrote to the claimant on 30 June 2021 to apologise to the claimant and to explain the steps which had been taken to address the issues raised, including assigning the claimant a training officer, offering him access to

further training and career development, and a commitment to learn the lessons for the whole organisation (page 327).

24. The claimant remains employed by the respondent.

The Law

Compensation for discrimination

25. The remedy for complaints of discrimination at work is set out in section 124 of the Equality Act 2010. Section 124 provides (as far as relevant here):

> *"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.*
>
> *(3) An appropriate recommendation is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the proceedings relate.*
>
> *(4) …*
>
> *(5) …*
>
> *(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.*
>
> *(7) If a respondent fails, without reasonable excuse, to comply with an appropriate recommendation..., the tribunal may—*
> *(a) if an order was made under subsection (2)(b), increase the amount of compensation to be paid;*
> *(b) if no such order was made, make one."*

26. In summary, under section 124(2)(b), where a tribunal finds that there has been a contravention of a relevant provision, as there has been here, it may order the respondent to pay compensation to the claimant. The compensation which may be ordered corresponds to the damages that could be ordered by a county court in England and Wales for a claim in tort (section 124(6) and section 119(2)). There is no upper limit on the amount of compensation that can be awarded.

27. The aim of compensation is that 'as best as money can do it, the [claimant] must be put into the position she would have been in but for the unlawful conduct' (Ministry of Defence v Cannock and ors 1994 ICR 918, EAT). In other words, the aim is that the claimant should be put in the position they would have been in if the discrimination had not occurred. This requires the tribunal to look at what loss has been caused by the discrimination.

28. Loss may include financial losses, injury to feelings and other non-pecuniary losses.

29. Injury to feelings awards are compensatory, not punitive. They are designed to compensate the injured party fully, not to punish the guilty party. They should be just to both parties, neither too low nor excessive. In exercising their discretion in assessing a sum, tribunals should remind themselves of the value in everyday life of the sum they have in mind. This may be done by reference to purchasing power or by reference to earnings.

30. In Vento v Chief Constable of West Yorkshire Police (No. 2) [2003] IRLR 102 the Court of Appeal identified three broad bands of compensation for injury to feelings awards. The lower band applies in less serious cases. The middle band applies in serious cases that do not merit an award in the upper band. The upper band applies in the most serious cases (with the most exceptional cases capable of exceeding the upper band).

31. Compensation may also include an award in respect of aggravated damages. Aggravated damages may be awarded in cases where the respondent has behaved in a 'high-handed, malicious, insulting or oppressive manner in committing the act of discrimination'. Aggravated damages are also compensatory not punitive.

32. In Commissioner of Police of the Metropolis v Shaw EAT 0125/11, Mr Justice Underhill (then President of the EAT) set out three broad categories of case in which aggravated damages might be awarded. One is where subsequent conduct adds to the claimant's injury, for example where the respondent 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.

33. When making awards for non-pecuniary losses, the tribunal must take care not to conflate the different types of award nor to allow double recovery.

34. Under section 124(2)(c), where a tribunal finds unlawful discrimination, it may make an appropriate recommendation that, within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect on the claimant of any matter to which the proceedings relate.

Acas Code of Practice on Grievance and Disciplinary Procedures

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

> *"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%."*

36. Section 207A applies to proceedings listed in Schedule A2, which includes claims for discrimination at work.

Conclusions

37. We have applied the relevant legal tests to the findings of fact that we have made, to decide the appropriate remedy. We start by assessing financial losses and non-pecuniary losses, and we consider the recommendations the claimant seeks. Lastly, we have considered the claimant's application for a preparation time order.

Loss of salary

38. The claimant has suffered a loss of salary as a result of the delay in starting his specialist portfolio and in gaining the qualification required for band 7 biomedical scientist roles. Without the discrimination, the claimant would have started and completed his specialist portfolio earlier, and would have been appointed to a higher paid band 7 roles earlier. The agreed loss of salary is £21,650 net.

39. The claimant does not make any additional claim for future loss of salary.

Interest on loss of salary

40. Interest on financial loss is payable at a rate of 8% from the midpoint of the period which runs from the date of the discrimination to the date of calculation. The date of discrimination is 1 April 2017.

41. The interest calculation is set out in table 1 below.

Table 1: interest on financial loss	
Interest start date	1 April 2017
Date of calculation	27 September 2021
Number of days	1641
Number of days to midpoint	820
Daily rate of interest	0.08 x £21,650/365
Total interest calculation	820 days x daily rate of interest
Total interest	£3,891.07

42. The interest on this element of the award is £3,891.07.

Pension loss

43. The claimant has incurred loss of pension as well as loss of salary.

44. The NHS pension scheme is a defined benefit scheme. The Employment Tribunals Principles for Compensating Pension Loss (Fourth Edition, Third Revision) says that normally losses under these schemes are calculated using the complex method. In this case neither party provided any information on which we could base a complex pension loss calculation. Neither party asked us to order a second remedy hearing to consider pension loss separately (and we do not think that it would be proportionate to do so).

45. We have decided instead to use the simpler contributions method to assess pension loss in this case. The period of loss is defined, and relatively short. The Employment Tribunals Principles for Compensating Pension Loss explains that the simpler contributions method can be appropriate in some defined benefit scheme cases, such as where the period of loss is relatively short. We consider this to be such a case.

46. The gross loss of salary is £26,453.51. The claimant's loss of earnings calculation on which the agreed figure is based is set out in his schedule of loss and shows relevant rates of pay from April each year (page 428 and page 450). This shows that the gross loss for the period April 2018 to April 2019 is £4,685.31. The gross loss for the period from April 2019 (the remaining loss) is £21,768.20.

47. For the year from 1 April 2018 to 31 March 2019 the respondent's pension contribution was 14.3%. Loss of employer's pension contributions for that period is £4,685.31 x 0.143 = £670.00.

48. For the remaining loss of salary (after 1 April 2019) the respondent's pension contribution was 20.6%. Although the additional contributions were payable by NHS England rather than the respondent, this is still a loss to the claimant. Loss of pension contributions for the remaining period is £21,768.20 x 0.206 = £4,484.25.

49. Total pension loss is therefore £670.00 + £4,484.25 = £5,154.25.

50. Pension loss is a form of future loss, and does not attract interest.

Injury to feelings

51. We have considered the *Vento* bands for awards of injury to feelings. The claimant said that an award at the top of the higher band was appropriate. The respondent invited us to make an award towards the bottom of the lower band.

52. We have found that the respondent discriminated against the claimant in respect of the specialist portfolio. Although we have made a finding in respect of one complaint of discrimination, it was not a 'one-off act' of discrimination, as the claimant raised the question of the specialist portfolio a number of times with the respondent, and the refusal had been ongoing for around two years by the time of the claim.

53. We have found that the discrimination had a significant impact on the claimant. It affected the claimant's career and his confidence. It made him feel undervalued and humiliated at work. There was clearly an impact on his health (although we take into account that other issues at work which we have found not to amount to unlawful discrimination may have played a part in this too).

54. Having considered those factors, we have decided that the appropriate award for injury to feelings in the claimant's case is an award in the middle of the middle *Vento* band. The middle band as updated in the 23 March 2018 Presidential Guidance on injury to feelings was £8,600 to £25,700. The claimant is awarded £17,150 in respect of injury to feelings.

55. This is an award of approximately 6 months' pay for the claimant. Stepping back and considering the level of this award, we are satisfied that it is appropriate and not excessive, and that it is compensatory not punitive. It properly reflects the injury to the claimant's feelings which was caused by the discrimination.

56. There was no medical evidence to show that the act of discrimination impacted on the claimant's ill health such that we should make an additional award for personal injury. While we accept that we could make such an award without medical evidence, we do not consider this to be appropriate in this case, particularly because of the difficulty in assessing, without medical evidence, the impact of the discrimination as distinct from the impact of the claimant's other employment issues. We are satisfied that injury to health is covered appropriately within the injury to feelings award.

Interest on injury to feelings

57. Interest on injury to feelings awards is payable at a rate of 8% from the date of the discrimination to the date of calculation. The date of discrimination is 1 April 2017.

Table 2: interest on injury to feelings	
Interest start date	1 April 2017
Date of calculation	27 September 2021
Number of days	1641
Daily rate of interest	0.08 x £17,150/365
Total interest calculation	1640 days x daily rate of interest
Total interest	£6,168.36

58. The interest on this element of the award is £6,168.36.

Aggravated damages

59. The claimant says that the respondent's conduct between January 2021 and June 2021 when putting in place arrangements for the claimant to undertake a specialist portfolio, and the time this took, has caused additional injury to the claimant. He seeks aggravated damages.

60. We have found that it took the respondent around 6 months to get the claimant's specialist portfolio issued once it had been agreed that he would start one. We have found that this delay was caused in part by the need for training status certification renewal by the respondent and also by working arrangements during the covid pandemic. The respondent's training manager apologised to the claimant for the delay and explained the reasons for it in detail. We have not found any high-handed, malicious, insulting or oppressive conduct by the respondent during this period, or conduct which could be seen as 'rubbing salt into the claimant's wounds'.

61. We have concluded that we should not make an award of aggravated damages.

Acas uplift

62. Although there was a misunderstanding or miscommunication in respect of the claimant's first grievance, he was not asking for that grievance to be dealt with formally. Paragraphs 32 to 45 of the Acas Code which relate to grievances in the workplace only apply where it has not been possible to resolve a grievance informally, and where the employee has raised the matter formally. That had not taken place in relation to the claimant's first grievance. There was therefore no failure by the respondent to comply with the Acas Code in dealing with the first grievance.

63. The respondent complied with the requirements of the Acas Code in respect of the claimant's second grievance.

64. As we have not found there to have been a failure to comply with the Acas Code of Practice on Grievance and Disciplinary Procedures, we cannot award an uplift to the claimant's award.

Summary of award

65. A summary of the award is at table 3.

Table 3: Summary of award		Totals
Loss of salary	£21,650.00	
Interest on lost salary	£3,891.07	
Pension loss	£5,154.25	
Total financial loss		£30,695.32
Injury to feelings	£17,150.00	
Interest on injury to feelings	£6,168.36	
Total injury to feelings		£23,318.36
Total award		£54,013.68

66. As this is an award for discrimination not involving termination of employment, the award is not taxable under Part 3 of the Income Tax (Earnings and Pensions) Act 2003 so no grossing up exercise is required.

Recommendations

67. The claimant has asked the tribunal to consider making the following recommendations:

    67.1. the respondent to ensure that the claimant will not be subject to harassment or bullying or further discrimination following this procedure;
    67.2. within one month, the claimant to promote the claimant to higher band (band 7) during the course of completing his specialist portfolio;
    67.3. the respondent's employees who are involved in the case to be subject to disciplinary investigation in that regard;
    67.4. staff who have been found to have breached the Equality Act 2010 being required to undertake formal equality and diversity training provided by a recognised external provider;
    67.5. the respondent to invite the Equality and Human Rights Commission to intervene into the respondent and investigate and recommend in particular what action should be taken in the light of the ET judgment to ensure that black employees are not subject to such unlawful discrimination in the future;
    67.6. the respondent to review the following:
        67.6.1. the manner in which PDR are carried out in the department as some members of staff mainly from black ethnic minority are forgotten for years;
        67.6.2. how promotions and training are given to members of staff within the department as some members of staff are promoted faster than those of black ethnic minority;

67.6.3. to review the way job interviews are carried out and to invite an external and independent person to all interviews given within the department.

68. We remind ourselves that a recommendation is a recommendation that, within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect on the claimant of any matter to which the proceedings relate.

69. First, we record that we would have given very careful consideration to a recommendation that the claimant be allowed to undertake a specialist portfolio. We would likely have considered this an important step for reducing the effect of the discriminatory treatment on the claimant. However, as the claimant is now undertaking a specialist portfolio, a recommendation to this effect is no longer needed.

70. Next, we have considered the recommendations sought by the claimant. A recommendation in the terms sought in paragraph 65.1 is not necessary. It would be unlawful under section 27 of the Equality Act for the respondent to subject the claimant to any detriment because of bringing these proceedings. Recommending that the respondent takes some step to tell staff not to harass, bully or discriminate against the claimant is unlikely to be practical or helpful.

71. We do not consider that it would be appropriate to make a recommendation that the claimant should be promoted within one month as sought in paragraph 65.2 as this would mean a recommendation to make an appointment outside the respondent's normal recruitment procedures. The claimant's financial losses arising from the delay to his career progression have been addressed in the award for financial losses which is based on agreed figures.

72. We also do not consider that it would be appropriate for us to recommend disciplinary investigations as sought in paragraph 65.3. The decision as to whether a disciplinary investigation should be undertaken is very much a matter for an employer and we think a recommendation of this nature would only be appropriate if the tribunal's findings raise specific concerns about conduct by an employee of the respondent. We do not consider that applies here.

73. Similarly, our conclusions on liability were not such that we think it appropriate to recommend that any particular member of staff should be required to undertake additional equality and diversity training provided by a recognised external provider, as suggested in paragraph 65.5. The trust already has diversity training in place and this is reviewed periodically.

74. Again, given the nature of the discriminatory conduct which we have found, we do not consider this to be a case where a recommendation should be made that the respondent should invite the EHRC to intervene and investigate (as suggested in paragraph 65.5).

75. As to paragraph 65.6, we did not make any finding of discrimination in respect of PDRs, job interviews or promotion. We do not consider that we should make recommendations in respect of PDRs, job interviews or promotion, as those do not relate to our conclusions on liability.

76. We do however think that it would be sensible for the respondent to review how training is allocated within the pathology department (as suggested in paragraph 65.6.2). Confusion over the appropriate procedure for allocating training was at the heart of our findings on liability. We think a review would reduce the adverse effect on the claimant in that it may reduce any concerns that similar problems may arise for him in the future.

77. We therefore make the following recommendation:

    77.1. that within 4 months the respondent reviews how training is allocated to members of staff within the pathology department; and
    77.2. that within 5 months the respondent writes to the claimant to explain the outcome of the review and any steps it will be taking as a result of the review.

The claimant's application for a preparation time order

78. Finally, we set out our reasons for our decision in respect of the claimant's application of 3 September 2021 for a preparation time order.

79. The power to award costs and to make preparation time orders is set out in rules 74 to 79 of the Employment Tribunal Rules of Procedure 2013. Unlike in civil litigation where the successful party can expect to recover some or all of their costs from the unsuccessful party, in the employment tribunal the general position is that parties bear their own costs, unless one of the grounds for making a costs or preparation time order is made out and the tribunal decides to exercise its discretion to make an award of costs.

80. Orders for costs and preparation time in the employment tribunal remain the exception rather than the rule.

81. A costs order can be made in favour of a represented party. A preparation time order can be made in favour of a party who is (and was) not legally represented. A preparation time order is defined in rule 75(2) as:

> *"an order that a party ('the paying party') make a payment to another party ('the receiving party') in respect of the receiving party's preparation time while not legally represented…"*

82. Preparation time is defined as 'time spent by the receiving party (including by any employees or advisers) in working on the case, except for time spent at any final hearing'.

83. Under rule 76(1) a tribunal may make a preparation time 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*…."

84. Rules 74 to 78 provide for a two-stage test to be applied by tribunals considering preparation time applications under Rule 76. The first stage is for the tribunal to consider whether the ground or grounds put forward by the party making the application are made out. If they are, the second stage is for the tribunal to consider whether to exercise its discretion to make an award of preparation time, and if so, for how much.

85. The claimant's application for a preparation time order is made on the basis that the respondent has acted vexatiously and unreasonably in the conduct of proceedings. In summary, the claimant says the respondent acted vexatiously and unreasonably in its approach to the preparation of the bundles for the liability and remedy hearings. The respondent prepared a small bundle of 30 pages enclosing the parties' correspondence about the liability hearing bundle.

86. We have carefully considered the claimant's application and the correspondence between the parties about the bundle. We can see that there was quite detailed communication about what documents should be included, and there was a delay in providing the claimant with a hard copy of the final version of the bundle for the liability hearing. This resulted in him having to amend page references in his witness statement at the liability hearing.

87. In relation to the remedy hearing, the claimant prepared a small bundle of additional documents which he felt should have been included in the remedy hearing bundle. The respondent's solicitors added some of the claimant's additional documents at the back of the final version of the bundle which was prepared on 16 September 2021, around a week before the remedy hearing.

88. It is not uncommon for there to be detailed discussions between the parties in cases of this nature about what should be included in the bundle. The parties' communications are polite and professional throughout. We do not consider that the respondent's conduct in the course of preparing the bundles for the hearings was vexatious or unreasonable. In reaching this conclusion we have taken into account that, because of covid-19 restrictions, the preparations were being made at a time when the respondent's representatives were mainly working from home and this made preparations more complicated, especially the provision of hard copy documents.

89. As we have not found that the respondent's conduct falls within rule 76(1)(a) there are no grounds for us to consider whether we should make a preparation time order. The claimant's application must therefore be refused.

Employment Judge Hawksworth

Date: 2 December 2021

Sent to the parties on: 3 December 2021

For the Tribunals Office

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